









IN THE SENATE OF THE UNITED STATES.

MARCH 12, 1856.—Submitted, and ordered to be printed, together with the views of the minority of the committee upon the same subject. Motion to print 62,000 additional copies referred to the Committee on Printing.

Mr. DOUGLAS made the following

REPORT.

*The Committee on Territories, to whom was referred so much of the annual message of the President of the United States as relates to territorial affairs, together with his special message of the 24th day of January, 1856, in regard to Kansas Territory, and his message of the 18th of February, in compliance with the resolution of the Senate of the 4th of February, 1856, requesting transcripts of certain papers relative to the affairs of the Territory of Kansas, having given the same that serious and mature deliberation which the importance of the subject demands, beg leave to submit the following report :*

Your committee deem this an appropriate occasion to state briefly, but distinctly, the principles upon which new States may be admitted and Territories organized under the authority of the constitution of the United States.

The constitution (section 3, article 4) provides that "new States may be admitted by the Congress into this Union."

Section 8, Article 1: "Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or office thereof."

10th amendment: "The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

A State of the federal Union is a sovereign power, limited only by the constitution of the United States.

The limitations which that instrument has imposed are few, specific, and uniform—applicable alike to all the States, old and new. There is no authority for putting a restriction upon the sovereignty of a new State, which the constitution has not placed on the original States. Indeed, if such a restriction could be imposed on any State, it would instantly cease to be a *State* within the meaning of the

federal constitution, and, in consequence of the inequality, would assimilate to the condition of a province or dependency. Hence, equality among all the States of the Union is a fundamental principle in our federative system—a principle embodied in the constitution, as the basis upon which the American Union rests.

African slavery existed in all the colonies, under the sanction of the British government, prior to the Declaration of Independence. When the constitution of the United States was adopted, it became the supreme law and bond of union between twelve slave-holding States and one non-slave-holding State. Each State reserved the right to decide the question of slavery for itself—to continue it as a domestic institution so long as it pleased, and to abolish it when it chose.

In pursuance of this reserved right, six of the original slave-holding States have since abolished and prohibited slavery within their limits respectively, without consulting Congress or their sister States, while the other six have retained and sustained it as a domestic institution, which, in their opinion, had become so firmly engrafted on their social systems, that the relation between the master and slave could not be dissolved with safety to either. In the meantime, eighteen new States have been admitted into the Union, in obedience to the federal constitution, on an equal footing with the original States, including, of course, the right of each to decide the question of slavery for itself. In deciding this question, it has so happened that nine of these new States have abolished and prohibited slavery, while the other nine have retained and regulated it. That these new States had at the time of their admission, and still retain, an equal right, under the federal constitution, with the original States, to decide all questions of domestic policy for themselves, including that of African slavery, ought not to be seriously questioned, and certainly cannot be successfully controverted.

They are all subject to the same supreme law, which, by the consent of each, constitutes the only limitation upon their sovereign authority.

Since we find the right to admit new States enumerated among the powers expressly delegated in the constitution, the question arises, whence does Congress derive authority to organize temporary governments for the Territories preparatory to their admission into the Union on an equal footing with the original States? Your committee are not prepared to adopt the reasoning which deduces the power from that other clause of the constitution, which says:

“Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.”

The language of this clause is much more appropriate when applied to property than to persons. It would seem to have been employed for the purpose of conferring upon Congress the power of disposing of the public lands and *other property belonging to the United States*, and to make all needful rules and regulations for that purpose, rather than to govern the people who might purchase those lands from the United States and become residents thereon. The word “territory” was an appropriate expression to designate that large area of public



lands of which the United States had become the owner by virtue of the revolution and the cession by the several States. The additional words "or other property belonging to the United States" clearly show that the term "territory" was used in its ordinary geographical sense to designate the public domain, and not as descriptive of the whole body of the people, constituting a distinct political community, who have no representation in Congress, and consequently no voice in making the laws upon which all their rights and liberties would depend, if it were conceded that Congress had the general and unlimited power to make all "needful rules and regulations concerning" their internal affairs and domestic concerns. It is under this clause of the constitution, and from this alone, that Congress derives authority to provide for the surveys of the public lands, for securing pre-emption rights to actual settlers, for the establishment of land offices in the several States and Territories, for exposing the lands to private and public sale, for issuing patents and confirming titles, and, in short, for making all needful rules and regulations for protecting and disposing of the public domain and other property belonging to the United States.

These needful rules and regulations may be embraced, and usually are found, in general laws applicable alike to States and Territories, wherever the United States may be the owner of the lands or other property to be regulated or disposed of. It can make no difference, under this clause of the constitution, whether the "territory, or other property belonging to the United States," shall be situated in Ohio or Kansas, in Alabama or Minnesota, in California or Oregon. The power of Congress to make needful rules and regulations is the same in the States and Territories, to the extent that the title is vested in the United States. Inasmuch as the right of legislation in such cases rests exclusively upon the fact of ownership, it is obvious it can extend only to the tracts of land to which the United States possess the title, and must cease in respect to each tract the instant it becomes private property by purchase from the United States. It will scarcely be contended that Congress possesses the power to legislate for the people of those States in which public lands may be located, in respect to their internal affairs and domestic concerns, merely because the United States may be so fortunate as to own a portion of the territory and other property within the limits of those States. Yet it should be borne in mind that this clause of the constitution confers upon Congress the same power to make needful rules and regulations in the States as it does in the Territories, concerning the territory or other property belonging to the United States.

In view of these considerations, your committee are not prepared to affirm that Congress derives authority to institute governments for the people of the Territories, from that clause of the constitution which confers the right to make needful rules and regulations concerning the territory or other property belonging to the United States; much less can we deduce the power from any supposed necessity, arising outside of the constitution, and not provided for in that instrument. The Federal government is one of delegated and limited powers, clothed with no rightful authority which does not result directly and necessa-

rily from the constitution. Necessity, when experience shall have clearly demonstrated its existence, may furnish satisfactory reasons for enlarging the authority of the federal government, by amendments to the constitution, in the mode prescribed in the instrument; but cannot afford the slightest excuse for the assumption of powers not delegated, and which, by the tenth amendment, are expressly "reserved to the States respectively, or to the people." Hence, before the power can be safely exercised, the right of Congress to organize Territories, by instituting temporary governments, must be traced directly to some provision of the constitution conferring the authority in express terms, or as a means necessary and proper to carry into effect some one or more of the powers which are specifically delegated. Is not the organization of a Territory eminently necessary and proper as a means of enabling the people thereof to form and mould their local and domestic institutions, and establish a State government under the authority of the constitution, preparatory to its admission into the Union? If so, the right of Congress to pass the organic act for the temporary government is clearly included in the provision which authorizes the admission of new States. This power, however, being an incident to an express grant, and resulting from it by necessary implication, as an appropriate means for carrying it into effect, must be exercised in harmony with the nature and objects of the grant from which it is deduced. The organic act of the Territory, deriving its validity from the power of Congress to admit new States, must contain no provision or restriction which would destroy or impair the equality of the proposed State with the original States, or impose any limitation upon its sovereignty which the constitution has not placed on all the States. So far as the organization of a Territory may be necessary and proper as a means of carrying into effect the provision of the constitution for the admission of new States, and when exercised with reference only to that end, the power of Congress is clear and explicit; but beyond that point the authority cannot extend, for the reason that all "powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." In other words, the organic act of the Territory, conforming to the spirit of the grant from which it receives its validity, must leave the people entirely free to form and regulate their domestic institutions and internal concerns in their own way, subject only to the constitution of the United States, to the end that when they attain the requisite population, and establish a State government in conformity to the federal constitution, they may be admitted into the Union on an equal footing with the original States in all respects whatsoever.

The act of Congress for the organization of the Territories of Kansas and Nebraska, was designed to conform to the spirit and letter of the federal constitution, by preserving and maintaining the fundamental principle of equality among all the States of the Union, notwithstanding the restriction contained in the 8th section of the act of March 6, 1820, (preparatory to the admission of Missouri into the Union,) which assumed to deny to the people forever the right to settle the question of slavery for themselves, provided they should make their homes and organize States north of thirty six degrees and thirty



minutes north latitude. Conforming to the cardinal principles of State equality and self-government, in obedience to the constitution, the Kansas-Nebraska act declared, in the precise language of the compromise measures of 1850, that, "when admitted as a State, the said Territory, or any portion of the same, shall be received into the Union, with or without slavery, as their constitutions may prescribe at the time of their admission." Again, after declaring the said 8th section of the Missouri act (sometimes called the Missouri compromise, or Missouri restriction) inoperative and void as being repugnant to these principles, the purpose of Congress, in passing the act, is declared in these words: "It being the true intent and meaning of this act not to legislate slavery into any State or Territory, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the constitution of the United States."

The passage of the Kansas-Nebraska act was strenuously resisted by all persons who thought it a less evil to deprive the people of new States and Territories of the right of State equality and self-government under the constitution, than to allow them to decide the slavery question for themselves, as every State of the Union had done, and must retain the undeniable right to do, so long as the constitution of the United States shall be maintained as the supreme law of the land. Finding opposition to the principles of the act unavailing in the halls of Congress and under the forms of the constitution, combinations were immediately entered into in some portions of the Union to control the political destinies, and form and regulate the domestic institutions, of those Territories and future States, through the machinery of emigrant aid societies. In order to give consistency and efficiency to the movement, and surround it with the color of legal authority, an act of incorporation was procured from the legislature of the State of Massachusetts, in which it was provided, in the first section, that twenty persons therein named, and their "associates, successors, and assigns, are hereby made a corporation, by the name of the Massachusetts Emigrant Aid Company, for the purpose of assisting emigrants to settle in the West; and for this purpose they shall have all the powers and privileges, and be subject to all the duties, restrictions, and liabilities set forth in the 38th and 44th chapters of the revised statutes" of Massachusetts.

The second section limited the capital stock of the company to five millions of dollars, and authorized the whole to be invested in real and personal estate, with the proviso that "the said corporation shall not hold real estate in this commonwealth (Massachusetts) to an amount exceeding twenty thousand dollars."

The third section provided for dividing the capital stock of the corporation into shares of one hundred dollars each, and prescribed the mode, time, and amounts in which assessments might be made on each share.

The fourth and last section was in these words:

"At all meetings of the stockholders, each stockholder shall be entitled to cast one vote for each share held by him; *provided*, that no

stockholder shall be entitled to cast more than fifty votes on shares held by himself, nor more than fifty votes by proxy."

Although the act of incorporation does not distinctly declare that the company was formed for the purpose of controlling the domestic institutions of the Territory of Kansas, and forcing it into the Union with a prohibition of slavery in her constitution, regardless of the rights and wishes of the people as guaranteed by the constitution of the United States, and secured by their organic law, yet the whole history of the movement, the circumstances in which it had its origin, and the professions and avowals of all engaged in it, render it certain and undeniable that such was its object.

To remove all doubt upon this point, your committee will here present a few extracts from a pamphlet published by the company soon after its organization, under the following caption:

"Organization, objects, and plan of operations of the Emigrant Aid Company; also, a description of Kansas, for the information of emigrants.

"*Trustees*—Amos A. Lawrence, Boston; J. M. S. Williams, Cambridge; Ely Thayer, Worcester.

"*Treasurer*, Amos A. Lawrence.

"*Secretary*, Thomas H. Webb, Boston.

"For the purpose of answering numerous communications concerning the plan of operations of the Emigrant Aid Company, and the resources of Kansas Territory, which it is proposed now to settle, the secretary of the company has deemed it expedient to publish the following definite information in regard to this particular: \* \*

"For these purposes it is recommended, 1st. That the trustees contract immediately with some one of the competing lines of travel for the conveyance of 20,000 persons from Massachusetts to that place in the West which the trustees shall select for their first settlement." \* \*

"It is recommended that the company's agents locate and take up for the company's benefit, the sections of land in which the boarding-houses and mills are located, and no others. And further, whenever the Territory shall be organized as a free State, the trustees shall dispose of all its interests there, replace by the sales the money laid out, declare a dividend to the stockholders, and that they then select a new field, and make similar arrangements for the settlement and organization of another free State of this Union." \* \* \*

"With the advantages attained by such a system of effort, the territory selected as the scene of operations would, it is believed, be filled up with free inhabitants. \* \* \*

"There is reason to suppose several thousand men of New England origin propose to emigrate under the auspices of some such arrangement, this very summer. Of the whole emigration from Europe, amounting to some 400,000 persons, there can be no difficulty in inducing some thirty or forty thousand to take the same direction." \* \*

"Especially will it prove an advantage to Massachusetts, if she create the new State by her foresight, supply the necessities to its in-

habitants, and open in the outset communications between their homes and her ports and factories.” \* \* \* \*

“It determines in the right way the institutions of the unsettled Territories, in less time than the discussion of them has required in Congress.”

Having thus secured from the State of Massachusetts the color of legal authority to sanction their proceedings, in perversion of the plain provisions of an act of Congress passed in pursuance of the constitution, the company commenced its operations by receiving subscriptions to its capital stock, and exerting its whole power to harmonize, combine, and direct, in the channel it should mark out, all the elements of opposition to the principles of the Kansas and Nebraska act. The plan adopted was to make it the interest of a large body of men, who sympathised with them in the objects of the corporation, to receive their aid and protection, and, under the auspices of the company, to proceed to Kansas, and acquire whatever residence, and do whatever acts, might be found necessary to enable them to vote at the elections, and through the ballot-box, if possible, to gain control over the legislation of the Territory. This movement is justified by those who originated and control the plan, upon the ground that the persons whom they sent to Kansas were free men, who, under the constitution and laws, had a perfect right to emigrate to Kansas or any other Territory; that the act of emigration was entirely voluntary on their part; and when they arrived in the Territory as actual settlers, they had as good a right as any other citizens to vote at the elections, and participate in the control of the government of the Territory. This would undoubtedly be true in a case of ordinary emigration, such as has filled up our new States and Territories, where each individual has gone, on his own account, to improve his condition and that of his family. But it is a very different thing where a State creates a vast moneyed corporation for the purpose of controlling the domestic institutions of a distinct political community fifteen hundred miles distant, and sends out the emigrants only as a means of accomplishing its paramount political objects. When a powerful corporation, with a capital of five millions of dollars invested in houses and lands, in merchandise and mills, in cannon and rifles, in powder and lead—in all the implements of art, agriculture, and war, and employing a corresponding number of men, all under the management and control of non-resident directors and stockholders, who are authorized by their charter to vote by proxy to the extent of fifty votes each, enters a distant and sparsely settled Territory with the fixed purpose of wielding all its power to control the domestic institutions and political destinies of the Territory, it becomes a question of fearful import how far the operations of the company are compatible with the rights and liberties of the people. Whatever may be the extent or limit of congressional authority over the Territories, it is clear that no individual State has the right to pass any law or authorize any act concerning or affecting the Territories, which it might not enact in reference to any other State.

If the people of any State should become so much enamored with



their own peculiar institutions as to conceive the philanthropic scheme of forcing so great a blessing on their unwilling neighbors, and with that view should create a mammoth moneyed corporation, for the avowed purpose of sending a sufficient number of their young men into the neighboring State, to remain long enough to acquire the right of voting, with the fixed and paramount object of reversing the settled policy and changing the domestic institutions of such State. would it not be deemed an act of aggression, as offensive and flagrant as if attempted by direct and open violence? It is a well-settled principle of constitutional law, in this country, that while all the States of the Union are united in one for certain purposes, yet each State, in respect to everything which affects its domestic policy and internal concerns, stands in the relation of a foreign power to every other State.

Hence, no State has a right to pass any law, or do or authorize any act, with the view to influence or change the domestic policy of any other State or Territory of the Union, more than it would with reference to France or England, or any other foreign State with which we are at peace. Indeed, every State of this Union is under higher obligations to observe a friendly forbearance and generous comity towards each other member of the confederacy than the laws of nations can impose on foreign States. While foreign States are restrained from all acts of aggression and unkindness only by that spirit of comity which the laws of nations enjoin upon all friendly powers, we have assumed the additional obligation to obey the constitution, which secures to every State the right to control its own internal affairs. If repugnance to domestic slavery can justify Massachusetts in incorporating a mammoth company to influence and control that question in any State or Territory of this Union, the same principle of action would authorize France or England to use the same means to accomplish the same end in Brazil or Cuba, or in fifteen States of this Union; while it would license the United States to interfere with serfdom in Russia, or polygamy in Turkey, or any other obnoxious institution in any part of the world. The same principle of action, when sanctioned by our example, would authorize all the kingdoms, and empires, and despotisms in the world to engage in a common crusade against republicanism in America, as an institution quite as obnoxious to them, as domestic slavery is to any portion of the people of the United States.

If our obligations arising under the laws of nations are so imperative as to make it our duty to enact neutrality laws, and to exert the whole power and authority of the executive branch of the government, including the army and navy, to enforce them, in restraining our citizens from interfering with the internal concerns of foreign States, can the obligations of each State and Territory of this Union be less imperative, under the federal constitution, to observe entire neutrality in respect to the domestic institutions of the several States and Territories? Non-interference with the internal concerns of other States, is recognised by all civilized countries as a fundamental principle of the laws of nations, for the reason that the peace of the world could not be maintained for a single day without it. How,

then, can we hope to preserve peace and fraternal feelings among the different portions of this republic, unless we yield implicit obedience to a principle which has all the sanction of patriotic duty as well as constitutional obligation?

When the emigrants sent out by the Massachusetts Emigrant Aid Company, and their affiliated societies, passed through the State of Missouri in large numbers on their way to Kansas, the violence of their language, and the unmistakable indications of their determined hostility to the domestic institutions of that State, created apprehensions that the object of the company was to abolitionize Kansas as a means of prosecuting a relentless warfare upon the institutions of slavery within the limits of Missouri. These apprehensions increased and spread with the progress of events, until they became the settled convictions of the people of that portion of the State most exposed to the danger by their proximity to the Kansas border. The natural consequence was, that immediate steps were taken by the people of the western counties of Missouri to stimulate, organize, and carry into effect a system of emigration similar to that of the Massachusetts Emigrant Aid Company, for the avowed purpose of counteracting the effects, and protecting themselves and their domestic institutions from the consequences of that company's operations.

The material difference in the character of the two rival and conflicting movements consists in the fact that the one had its origin in an aggressive, and the other in a defensive policy. The one was organized in pursuance of the provisions and claiming to act under the authority of a legislative enactment of a distant State, whose internal prosperity and domestic security did not depend upon the success of the movement; while the other was the spontaneous action of the people living in the immediate vicinity of the theatre of operations, excited by a sense of common danger to the necessity of protecting their own firesides from the apprehended horrors of servile insurrection and intestine war. Both parties, conceiving it to be essential to the success of their respective plans that they should be upon the field of operations prior to the first election in the Territory, selected principally young men, persons unencumbered by families, and whose conditions in life enabled them to leave at a moment's warning, and move with great celerity, to go at once, and select and occupy the most eligible sites and favored locations in the Territory, to be held by themselves and their associates who should follow them. For the successful prosecution of such a scheme, the Missourians, who lived in the immediate vicinity, possessed peculiar advantages over their rivals from the more remote portions of the Union. Each family could send one of its members across the line to mark out his claim, erect a cabin, and put in a small crop, sufficient to give him as valid a right to be deemed an actual settler and qualified voter as those who were being imported by the emigrant aid societies. In an unoccupied territory, where the lands have not been surveyed, and where there were no marks or lines to indicate the boundaries of sections and quartersections, and where no legal title could be had until after the surveys should be made, disputes, quarrels, violence, and bloodshed might have been expected as the natural and inevitable consequences of such extraordinary systems of emigration,



which divided and arrayed the settlers into two great hostile parties, each having an inducement to claim more than was his right, in order to hold it for some new comer of his own party, and at the same time prevent persons belonging to the opposite party from settling in the neighborhood. As a result of this state of things, the great mass of emigrants from the Northwest and from other States, who went there on their own account, with no other object and influence, by no other motives than to improve their condition and secure good homes for their families, were compelled to array themselves under the banner of one of these hostile parties, in order to insure protection to themselves and their claims against the aggressions and violence of the other.

At the first election held in the Territory, on the 29th day of November, 1854, for a delegate to Congress, J. W. Whitfield was chosen by an overwhelming majority, having received the votes of men of all parties who were in favor of the principles of the Kansas-Nebraska act, and opposed to placing the political destinies of the Territory in the keeping of the Abolition party of the northern States, to be managed through the machinery of their emigrant aid companies. No sooner was the result of the election known, than the defeated party proclaimed, throughout the length and breadth of the republic, that it had been produced by the invasion of the Territory by a Missouri mob, which had overawed and outnumbered and outvoted the *bona-fide* settlers of the Territory. By reference to the executive journal of the Territory, which will be found in the papers furnished by the President of the United States in response to a call of the Senate, it will be found that Governor Reeder, in obedience to what he considered to be a duty enjoined on him by the act of Congress organizing the Territory, on the 10th day of November, 1854, issued a proclamation, prescribing the time, place, and mode of holding the election, and appointing by name three citizens of the Territory residing in each election district to conduct the election in such district, together with the following oath, which was taken by the judges before entering on their duties, to wit:

“We do severally swear that we will perform our duties as judges of the election, to be held this day in the ——— district of the Territory of Kansas, to the best of our judgment and ability; that we will keep a correct and faithful record or list of persons who shall vote at said election; that we will poll no tickets from any person who is not an actual *bona-fide* resident and inhabitant of said Territory on the day of election, and whom we shall not honestly believe to be a qualified voter according to the act of Congress organizing said Territory; that we will reject the votes of all and every non-resident whom we shall believe to have come into the Territory for the mere purpose of voting; that in all cases where we are ignorant of the voter's right, we will require legal evidence thereof, by his own oath or otherwise; that we will make a true and faithful return of the votes which shall be polled to the governor of the said Territory.”

The same proclamation pointed out in detail the mode in which the election should be conducted; and, among other things, that the polls will be opened for reception of votes between eight and ten o'clock a.

m., and kept open continually until six o'clock p. m ; that the judges will keep two corresponding lists of persons who shall vote, numbering each name; that when a dispute arises as to the qualifications of a voter, the judges shall examine the voter, or any other persons, under oath, upon the subject, and the decision of a majority of the board will be conclusive; that when the election shall close, the judges shall open and count the votes, and keep two corresponding tally-lists, and if the tally-lists shall agree, the judges shall then publicly proclaim the result, and shall make up and sign duplicate certificates in the form prescribed; and shall certify, under their oaths, that the certificate is a true and correct return of the votes polled by lawful resident voters.

The proclamation also provides that the tickets or votes polled shall, after being counted, be again deposited in the box, together with one copy of the oath, and one list of the voters, and one tally-list, and one certificate of return; and that the judges shall seal them up in the box, and carefully preserve the same until called for by the governor of said Territory, in the event of its correctness being contested; and that the remaining copy of the oath, list of voters, tally-list, and return, will be taken by one of the judges, who shall deliver the same in person to the governor.

The proclamation also provides that "In case any person or persons shall dispute the fairness or correctness of the return of any election district, they shall make a written statement, directed to the governor, and setting forth the specific cause of complaint or errors in the conducting or returning of the election in said district, signed by not less than ten qualified voters of the Territory, and with an affidavit of one or more qualified voters to the truth of the fact therein stated; and the said complaint and affidavit shall be presented to the governor on or before the fourth day of December next, when the proper proceedings will be taken to hear and decide such complaint."

By reference to the executive journal of the Territory, we find the following entry:

"December 4, 1854.—The judges of the several election districts made return of the votes polled at the election held on the 29th day of November last, for a delegate to the House of Representatives of the United States; from which it appeared that the votes in the said several districts were as follows, to wit:—"

Here follows a list of the votes cast for each candidate in each of the seventeen districts of the Territory, showing that

J. W. Whitfield had received.....	2,258 votes.
All other persons received.....	575 "

And on the same page is the following entry:

"December 5, 1854.—On examining and collating the returns, J. W. Whitfield is declared by the governor to be duly elected delegate to the House of Representatives of the United States, and the same day the certificate of the governor, under the seal of the Territory, issued to said J. W. Whitfield of his election."

It nowhere appears that Gen. Whitfield's right to a seat by virtue of that election was ever contested. It does not appear that "ten

qualified voters of the Territory" were ever found who were willing to make the "written statement directed to the governor, with an affidavit" of one or more qualified voters to the "truth of the facts therein stated," to "dispute the fairness or correctness of the returns," or to "set forth specific cause of complaint or errors in the conducting or returning of the election," in any one of the seventeen districts of the Territory. Certain it is, that there could not have been a system of fraud and violence such as has been charged by the agents and supporters of the emigrant aid societies, unless the governor and judges of election were parties to it; and your committee are not prepared to assume a fact so disreputable to them, and so improbable upon the state of facts presented, without specific charges and direct proof. In the absence of all proof and probable truth, the charge that the Missourians had invaded the Territory and controlled the congressional election by fraud and violence, was circulated throughout the free States, and made the basis of the most inflammatory appeals to all men opposed to the principles of the Kansas-Nebraska act to emigrate or send emigrants to Kansas, for the purpose of repelling the invaders, and assisting their friends who were then in the Territory in putting down the slave power, and prohibiting slavery in Kansas, with the view of making it a free State. Exaggerated accounts of the large number of emigrants on their way under the auspices of the emigrant aid companies with the view of controlling the election for members of the Territorial legislature, which was to take place on the 30th of March, 1855, were published and circulated. These accounts being republished and believed in Missouri, where the excitement had already been inflamed to a fearful intensity, induced a corresponding effort to send at least an equal number, to counteract the apprehended result of this new importation. Your committee have not been able to obtain definite and satisfactory information in regard to the alleged irregularities in conducting the election, and the number of illegal votes on the 30th of March; but, from the most reliable sources of information accessible to your committee, including various papers, documents, and statements, kindly furnished by Messrs. Whitfield and Reeder, rival claimants of the delegate's seat in Congress for Kansas Territory, it would seem that the facts are substantially as follows:

The election was held in obedience to the proclamation of the governor of the Territory, which prescribed the mode of proceeding, the form of the oath and returns, the precautionary safeguards against illegal voting, and the mode of contesting the election, which were, in substance, the same as those already referred to in connexion with the congressional election. When the period arrived for the governor to canvass the returns, and issue certificates to the persons elected, it appeared that protests had been filed against the fairness of the proceedings and the correctness of the returns, in seven out of the eighteen election districts into which the Territory had been divided for election purposes, alleging fraudulent and illegal voting by persons who were not actual settlers and qualified voters of the Territory. It also appears that in some of these contested cases the form of the oath administered to the judges, and of the returns made by them,



were not in conformity to the proclamation of the governor. After a careful investigation of the facts of each case, as presented by the returns of the judges, and the protests and allegations of all persons who disputed the fairness of the election and the correctness of the returns, the governor came to the conclusion that it was his duty to set aside the election in these seven disputed districts; the effect of which was, to create two vacancies in the council, and nine in the house of representatives of the Territory, to be filled by a new election; and to change the result so far as to cause the certificate for one councilman and one representative to issue to different persons than those returned as elected by the judges. Accordingly the governor issued his writs for special elections, to be held on the 24th of May, to fill those vacancies, and, at the same time, granted certificates of election to eleven councilmen and seventeen representatives, whose election had not been contested, and whom he adjudged to have been fairly elected. At the special election to fill these vacancies, three of the persons whose election on the 30th of March had been set aside for the reasons already stated, were re-elected, and in the other districts different persons were returned; and the governor having adjudged them to have been duly elected, accordingly granted them certificates of election thus making the full complement of thirteen councilmen and twenty-six representatives, of whom, by the organic law of the Territory, the legislature was to be composed. On the 17th day of April the governor issued his proclamation, summoning these thirteen councilmen and twenty-six representatives, whom he had commissioned as having been fairly elected, to assemble at Pawnee City on the 2d day of July, and organize as the legislature of the Territory of Kansas.

It appears from the journal that the two houses did assemble, in obedience to the governor's proclamation, at the time and place appointed by him; and, after the oath of office had been duly administered by one of the judges of the supreme court of the Territory to each of the members who held the governor's certificate, proceeded to organize their respective houses by the election of their officers; and each notified the other, by resolution, that they were thus duly organized. Also, by joint resolution, appointed a committee who waited on the governor, and informed him that "the two houses of the *Kansas legislature* are organized, and are now ready to proceed to business, and to receive" such communication as he may deem necessary.

In response to this joint resolution, "a message from the governor, by Mr. Higgins, his private secretary, transmitting his message, was received, and ordered to be read."

The message commences thus:

*"To the Honorable the Council and House of Representatives of the Territory of Kansas:*

"Having been duly notified that your respective bodies have organized for the performance of your official functions, I herewith submit to you the usual executive communication relative to subjects of legislation, which universal and long-continued usage in analogous cases would seem to demand, although no express requirement of it is to be

found in the act of Congress which has brought us into official existence, and prescribed our official duties.

"The position which we occupy, and the solemn trust which is confided to us for originating the laws and institutions, and moulding the destinies of a new republic in the very geographical centre of our vast and magnificent confederation, cannot but impress us with a deep and solemn sense of the heavy responsibility which we have assumed, and admonish us to lay aside all selfish and equivocal motives, to discard all unworthy ends, and, in the spirit of justice and charity to each other, with pure hearts, tempered feelings, and sober judgments, to address ourselves to our task, and so perform it in the fear and reverence of that God who oversees our work, that the star that we expect to add to the national banner shall be dimmed by no taint or tarnish of dishonor, and be subject to no reproach save that which springs from the inevitable fallibility of just and upright men."

The governor, with the view to the "ascertainment of the existing law" in the Territory, proceeds to trace the history of all legislation affecting it since the country was acquired from France, and advises the legislature to pass such laws as the public interest might require upon all appropriate subjects of legislation, and particularly the slavery question, the division of the Territory into counties, the organization of county courts, the election of judicial and ministerial officers, education, taxes, revenues, the location of the permanent seat of government, and the organization of the militia, as subjects worthy of their immediate attention.

From this message, as well as from all the official acts of the governor preceding it, having reference to the election and return of the members and the convening of the two houses for legislative business, the conclusion is irresistible, that up to this period of time the governor had never conceived the idea—if, indeed, he has since entertained it—that the two houses were spurious and fraudulent assemblies, having no rightful authority to pass laws which would be binding upon the people of Kansas. On the first day of the session, and immediately after the organization of the house was effected, the following resolution was adopted:

"*Resolved*, That all persons who may desire to contest the seats of any persons now holding certificates of election as members of this house, may present their protests to the committee on credentials, and that notice thereof shall be given to the persons holding such certificates."

On the 4th day of July, (being the third day of the session,) the majority of the committee, including four of the five members, reported that, "HAVING HEARD AND EXAMINED ALL THE EVIDENCE TOUCHING THE MATTER OF INQUIRY BEFORE THEM, and taking the organic law of Congress, passed on the 20th day of May, in the year 1854, organizing the Territories of Kansas and Nebraska," as their guiding-star, they have arrived at the conclusions which they proceed to elucidate and enforce in a lengthy report. From this report, it appears that fifteen out of twenty-two members present were permitted to retain their seats by unanimous consent, no one appearing to contest or dispute the fairness of the election, or regularity or truthfulness of the return,



in either of their cases. Hence the contest was reduced to the claims of one member who received the certificate under the general election of the 30th March, and the six members present who received certificates under the special election of the 24th of May. In the first case the decision of the governor was reversed, and the seat awarded to the candidate who received the highest number of votes at the election on the 30th of March, and from whom the certificate had been withheld by the governor, upon the ground of irregularity in the election and returns from one precinct, the exclusion of which poll gave the majority to the opposing candidate. In the other six cases the sitting members were deprived of their seats; and the candidates receiving the highest number of votes at the general election on the 30th of March were awarded their places, upon the ground that the special election on the 24th of May was illegal and void, the governor not being authorized, by the organic law of the Territory, to go behind the returns, and set aside the election held on the 30th of March.

The minority report dissents from the reasoning, and protests against the conclusions of the majority, and affirms the right of the sitting members to retain their seats, upon the ground that the governor's certificate was not merely *prima-facie* evidence, but was conclusive, in respect to the rights of all claimants and contestants; and hence the house could not go behind the certificates of election to inquire whether there had been a previous election in those districts on the 30th of March, and who had received the highest number of legal votes at that election. The proposition is thus stated in the minority report: "I cannot agree that this body has the right to go behind the decision of the governor, who, by virtue of his office, is the organizing federal arm of the general government, to evolve and manage a new government for this Territory, for the obvious reason that Congress makes him the sole judge of the qualifications for membership." It is true, that the minority report alludes to "evidence before the committee of great deficiencies, not in the form of conducting the elections, but in the manner of holding them, both as to the qualifications of the judges who presided, and the returns made out by them," and says there is "no doubt that these illegal proceedings on the one hand induced the governor to withhold certificates from some who, from the number of votes returned in their favor, might at the same time appear to have been properly elected, and, on the other, to have been the ground on which he presented a certificate in one instance, and in another ordered a new election in reference to other districts." But while the minority report affirms the right of the governor to go behind the returns and investigate irregularities and illegal voting at the election, as well as deficiencies in the forms of the returns, and asserts that he did exercise this right in each case in which he granted or withheld a certificate, it maintains that the governor's decision, as evinced by his certificate, was final and conclusive, and could not be revived, much less reversed, by either branch of the Territorial legislature. So far as the question involves the legality of the Kansas legislature, and the validity of its acts, it is entirely immaterial whether we adopt the reasoning and

conclusions of the minority or majority reports, for each proves that the legislature was legally and duly constituted. The minority report establishes the fact, by the position that the governor's certificate was conclusive, and that he granted certificates to ten out of the thirteen councilmen, and to seventeen out of the twenty-six representatives who finally held their seats, which was largely more than a quorum of each branch of the legislature. The majority report establishes the same fact, by the position that after going behind the governor's certificate, and carefully examining the facts, they confirmed these same ten councilmen and seventeen representatives in their seats, and then awarded the seats of the other three councilmen and nine representatives to the candidates whom they believed to have been legally elected at the general election on the 30th of March.

The house, by eighteen votes in the affirmative to one vote in the negative, passed a resolution adopting the majority report, and declaring that the contestants "having been duly elected on the 30th of March, 1855, are entitled to their seats as members of this house." Whereupon four of the sitting members, whose seats were vacated by the adoption of the majority report, signed a protest, and asked that it be spread on the journal of the house, which was accordingly done in the following words:

*"Protest.*

"We, the undersigned members of the house of representatives of Kansas Territory, believe the organic act organizing the said Territory gives this house no power to oust any member from this house who has received a certificate from the governor; that this House cannot go behind an election called by the governor, and consider any claims based on a prior election. We would therefore protest against such a proceeding, and ask this protest to be spread upon the journal of this house.

"JOHN HUTCHINSON,  
"WILLIAM JESSEE,  
"AUGUSTUS WATTLES,  
"E. D. LADD."

Under date of July 6, the journal contains a message from the governor to the "house of representatives of the Territory of Kansas," returning "house bill entitled 'An act to remove the seat of government temporarily to the Shawnee Manual Labor School, in the Territory of Kansas,' together with his objections." While the governor, in assigning his reasons for returning the bill, labors to prove that the legislature had transcended its authority under the organic act, in adopting this particular measure, and argues against its expediency on the score of the loss of time and money in removing to a different place during the session, he clearly and distinctly recognises the council and house of representatives as constituting the legislature of the Territory of Kansas, elected and organized in conformity to the act of Congress creating the Territory.

The reasons of the governor for returning the bill, were spread upon the journal, and, upon reconsideration, it was passed by a two-

thirds vote in each branch of the legislature, and thus became the law of the land, "the objections of the governor to the contrary notwithstanding."

On the same day the following resolution was adopted by both houses :

"*Resolved by the House of Representatives of the Territory of Kansas, (the Council concurring therein,) That the legislature of said Territory do adjourn on the 6th day of July, A. D. 1855, to meet again on Monday, the 16th day of July, 1855, at 2 o'clock p. m., at the Shawnee manual-labor school, in the said Territory.*"

And on the same day the following resolution was also adopted by both houses :

"*Resolved, That a committee of three be appointed on the part of the council, to act in conjunction with a committee on the part of the house of representatives, to inform his excellency the governor that the legislative assembly will adjourn this afternoon, to meet on Monday, the 16th instant, at the Shawnee manual-labor school, in the Territory of Kansas.*"

On the 16th of July the two houses assembled, in pursuance of the adjournment, at the Shawnee manual-labor school, known as Shawnee Mission, and proceeded to the discharge of their legislative duties. In the meantime the governor had also repaired to Shawnee Mission, it being the place of his residence in the Territory, and the seat of the executive offices as established and continued by himself during the whole period he exercised the executive functions.

On the 21st of July a message was received from the governor, by his private secretary, Mr. Lowry, directed "To the House of Representatives of the Territory of Kansas," in which he says: "I return to your House, in which they originated, the bill entitled 'An act to prevent the sale of intoxicating liquors and games of chance within one mile of the Shawnee Manual Labor School in the Territory of Kansas,' and the bill entitled 'An act to establish a ferry at the town of Atchison, in Kansas Territory,' without my approval. I see nothing in the bills themselves to prevent my sanction of them, and my reasons for disapproval have been doubtless anticipated by you, as necessarily resulting from the opinion expressed in my message of the 6th instant."

The governor then proceeds to argue the question at great length, *whether the legislature is now in session at a place which can be recognised as a seat of government where the business of legislation can be legally or legitimately carried on.*

He does not question the fairness and legality of the election of the members composing the legislature ; nor the regularity and validity of their organization ; nor their competency as a legislature to pass all laws which they may deem necessary and proper for the best interests of the people of Kansas, *provided it shall be done at the right place.* Upon this point he says:

"It seems to be plain that the legislature now in session, so far as the place is concerned, is in contravention of the act of Congress, and where they have no right to sit, and can make no valid legislation. Entertaining these views, I can give no sanction to any bill that may



be passed; and if my reasons are not satisfactory to the legislative assembly, it follows that we must act independently of each other."

In conclusion the governor says: "If I am right in these opinions, and our Territory shall derive no fruits from the meeting of the present legislative assembly, I shall at least have the satisfaction of recollecting that I called the attention of the assembly to the point before they removed, and that the responsibility, therefore, rests not on the executive."

The governor having thus suspended all official intercourse with the two branches of the legislature, refusing to examine their acts with a view of either approving or disapproving them, they appointed a joint committee of the two houses to draught a memorial to the President of the United States, asking his removal from the office of governor; which memorial was signed by the presiding officers and members in joint session. The memorialists, after reviewing the causes which had led to such serious difficulties, and vindicating the right of the legislature, under the organic act, to remove the seat of government from Pawnee City to Shawnee Mission, concluded as follows:

"In conclusion, we charge the governor, A. H. Reeder, with wilful neglect of the interests of the Territory; with endeavoring by all means in his power to subvert the ends and objects intended to be accomplished by the 'Kansas and Nebraska bill,' by neglecting the public interests and making them subservient to private speculation; by aiding and encouraging persons in factious and treasonable opposition to the wishes of the majority of the citizens of the Territory, and the laws of the United States in force in said Territory; by encouraging persons to violate the laws of the United States, and set at defiance the commands of the general government; by inciting persons to resist the laws which may be passed by the present legislative assembly of this Territory. For these, and many other reasons, we respectfully pray your excellency to remove the said A. H. Reeder from the exercise of the functions now held by him in said Territory; and represent that a continuance of the same will be prejudicial to the best interests of the said Territory. And, as in duty bound, we will ever pray," &c., &c.

*[Signed by the officers and members of both houses.]*

On the 15th of August, Governor Reeder addressed a note to the Department of State, acknowledging the receipt of a communication from the acting Secretary, under date of the 28th July, in which he was notified that "in consequence of your [Governor Reeder's] purchase of Kansas half-breed lands," and "more especially the undertaking of sundry persons, yourself included, to lay out new cities on military or other reservations in the Territory of Kansas," and "more particularly, as you have summoned the legislative assembly of the Territory to meet at one of the places referred to, denominated in your official proclamation 'Pawnee City,' I have, therefore, by the direction of the President, to notify you that your functions and authority as governor of the Territory of Kansas are hereby terminated."

On the 16th of August, the journal of the house of representatives says:

“The following message was received from Governor A. H. Reeder, by Mr. Lowry, his private secretary :

*“To the honorable the members of the Council and House of Representatives of the Territory of Kansas :*

“GENTLEMEN : Although, in my message to your bodies under date of the 21st instant, [ult.] I stated that I was unable to convince myself of the legality of your session at this place, for reasons then given ; and although that opinion still remains unchanged, yet, inasmuch as my reasons were not satisfactory to your body, and the bills passed by your houses have been up to this time sent to me for approval, it is proper that I should inform you that after your adjournment of yesterday I received official notification that my functions as governor of the Territory of Kansas were terminated. No successor having arrived, Secretary Woodson will of course perform the duties of the office as acting governor.

A. H. REEDER.”

Inasmuch as Governor Reeder dissolved his official relations with the legislature, and denied the validity of their acts, solely upon the ground that they were enacted *in the wrong place*, it becomes material to inquire whether it was competent for them, under the organic act, to remove the seat of government temporarily from “Pawnee City” to the Shawnee Mission. The 24th section of the organic act provides “that the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the constitution of the United States and the provisions of this act.”

That the location of the seat of government, and the changing of the same whenever the public interests and convenience may require it, is a “rightful subject of legislation,” is too plain to admit of argument ; hence the power is clearly included in this general grant, and may be exercised at pleasure by the legislature, unless it shall be made to appear that Congress, by some other provision, has imposed restrictions or conditions upon its exercise.

The thirty-first section of the organic act provides “that the temporary seat of government of said Territory is hereby located at Fort Leavenworth ; and that such portions of the public buildings as may not be actually used and needed for military purposes may be occupied and used, under the direction of the governor and legislative assembly, for such public purposes as may be required under the provisions of this act ;” and the twenty-second section of the same act provides that “the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor shall appoint” for the first meeting. These two provisions, being parts of the same act, and having reference to the same subject-matter, must be taken together, and receive such a construction as will give full effect to each, and not render either nugatory. While, therefore, the governor was authorized to convene the legislature, in the first instance, at such place as he should appoint, still he was required, by that provision which made Fort Leavenworth the temporary seat of government, with the view of using some of the public buildings, to designate



as the place some one of the public buildings within the military reservation of Fort Leavenworth. Had not Congress, in the meantime, interposed and changed the law, as here presented, the governor would not have been authorized to have convened the legislature at "Pawnee City," or at any other place in the Territory than some one of the public buildings at Fort Leavenworth, as provided in the organic act.

In view of the fact that the Secretary of War had intimated an opinion that all of the public buildings at Fort Leavenworth were needed for military purposes, and that the location of the seat of government, even temporarily, within the lines of a military reservation, where the military law must necessarily prevail, would be inconvenient, if not injurious to the public service, the following provision was adopted in the appropriation bill of the 5th of August, 1854, for the purpose of enabling the governor to erect buildings for the temporary seat of government at some more suitable and convenient point in the Territory: "That in the event that the Secretary of War shall deem it inconsistent with the interest of the military service to furnish a sufficient portion of the military buildings at Fort Leavenworth for the use of the Territorial government of Kansas, the sum of twenty-five thousand dollars shall be, and in that contingency is hereby appropriated, for the erection of public buildings for the use of the legislature of the Territory of Kansas, to be expended under the direction of the governor of said Territory."

Under this provision, taken in connexion with that clause of the organic act which authorized the governor to convene the legislature at such place as he should appoint, he would have had the right to establish the temporary seat of government and erect the public buildings at Pawnee City, or any other place he might have selected in the Territory, instead of Fort Leavenworth, but for the fact that on the 3d of March, 1855, and before any portion of the money had been expended, or even the site selected, Congress made a further appropriation of twenty-five thousand dollars for public buildings, with the proviso "that said money, or any part thereof, or any portion of the money heretofore appropriated for this purpose, shall not be expended until the legislature of said Territory shall have fixed by law the permanent seat of government." This provision did not confer upon the legislature any power in respect to the location of the seat of government, either temporarily or permanently, which it did not previously possess; for the general grant, extending to all "rightful subjects of legislation," necessarily included the right to determine the place of holding its sessions. The object, as well as legal effect of this provision, was to restrain the governor from expending the appropriation until the voice of the people of Kansas should be expressed, through their legislature, in the selection of the place; leaving the governor to perform his whole duty under the 22d section of the organic act, by appointing the place and day of the first meeting of the legislature, and of expending the money appropriated by Congress for the erection of public buildings, at such place as the legislature should designate for the permanent seat of government of the Territory.

Under this view of the subject, it is evident that the legislature was clothed with legitimate authority to enact the law in obedience to which its session was adjourned from Pawnee City to Shawnee Mission; and that its enactments, made at the latter place, must have the same force and validity that they would have possessed had not the removal taken place.

Those who seek to find some tenable ground upon which to destroy the validity of the legislative acts of Kansas, seeing that they cannot safely rely upon the alleged irregularity of the elections, nor upon the absence of legal authority in the legislature to remove the seat of government, flatter themselves that they have recently discovered a new fact which will extricate them from their difficulty, and enable them to accomplish their purpose. It is, that by the treaties of November 7, 1825, and of August 8, 1831, with the Shawnees of Missouri and Ohio, a large tract of land, including the Shawnee Mission, where the legislature held its session, and the governor established the executive offices, was secured to those Indians, with the guaranty on the part of the United States "that said lands shall never be within the bounds of any State or Territory, nor subject to the laws thereof;" and that the 19th section of the Kansas-Nebraska act provides that "nothing in this act contained shall be construed to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Kansas." Upon the authority of these clauses of the treaties, and of the act of Congress organizing the Territory, it is assumed that the Shawnee Mission, where the legislature enacted those laws, was not within the limits or jurisdiction of the Territory of Kansas, and hence they were null and void. Without admitting, even by implication, that the place where the legislature should enact its laws would, to any extent, impair their validity, it is proper to call the attention of the Senate to the fact recorded on its journal, that, on the 10th of May, 1854, (only a few days before the passage of the Kansas-Nebraska act,) a treaty was made with these same Indians, by the first article of which all the lands granted to them by the said treaties of 1825 and 1831, were ceded to the United States, and, being thus exempted from the operation of the guaranties in those treaties, were, by the terms of the organic act of Kansas, included within the limits, and rendered subject to the jurisdiction of said Territory.

The second article granted the house in which the legislature afterwards held its sessions, and the land upon which the house stood, to the missionary society of the Methodist Episcopal Church South, in these words: "Of the lands lying east of the parallel line aforesaid, there shall first be set apart to the missionary society of the Methodist Episcopal Church South, to include the improvements of the Indian manual-labor school, three sections of land; to the Friends' Shawnee labor school, including the improvements there, three hundred and twenty acres of land; and to the American Baptist Union, to include the improvements where the superintendent of the school now resides, one hundred and sixty acres of land; and also

five acres of land to the Shawnee Methodist Church, including the meeting-house and grave-yard; and two acres of land to the Shawnee Baptist Church, including the meeting-house and grave-yard."

The other articles of the treaty provide for the survey of these lands, and for granting two hundred acres to each Shawnee Indian, to be held as private property, subject to such conditions as Congress should impose, and recognise the right of the legislature to lay out roads and public highways across the Indian lands, on the same terms as the law provides for their location through the lands of citizens of the United States. The Rev. Thomas Johnson, who was president of the Kansas legislative council, and also agent of the missionary society of the Methodist Episcopal Church, to which the lands and improvements belonged, authorized the legislature to use and occupy such portions of the buildings of which he held the lawful possession, as they should find convenient in the exercise of their legislative functions.

Upon a careful review and examination of all the facts, laws, and treaties bearing upon the point, your committee are clearly of the opinion that the Shawnee manual-labor school was a place to which the legislature might lawfully adjourn and enact valid laws in pursuance of the organic act of the Territory.

We do not deem it necessary to inquire into the expediency of the removal of the seat of government, for the reason that it cannot affect the validity of the legislative proceedings. It is sufficient to state, that the reasons assigned by the governor against the expediency of the measure, were: first, "the loss of time (more valuable because limited) which our organic law allots to the legislative session;" and secondly, "because it will involve a pecuniary loss, in view of the arrangements which have been made at this place for our accommodation." As an offset to the unfortunate circumstance that the people of Kansas would be deprived, for the period of ten days, of all the advantages and protection which were expected to result from the wholesome laws which the governor had recommended them to enact upon all rightful subjects of legislation, and to the pecuniary loss which would be sustained in consequence of the removal from Pawnee City, the members of the legislature, in their memorial to the President of the United States, asking him to remove the governor, state their reasons as follows, for the allegation that there was an unnecessary loss of three months' time after the election in convening the legislature, and that Pawnee was not a suitable place for them to meet:

"After the contest was over, and the result known, he delayed the assembling of the body until the 2d day of July—more than three months afterwards—and that, too, when the whole Union was convulsed on account of alleged outrages in Kansas Territory, and yet no law for the punishment or prevention of them. When at last they did meet, upon the call of the governor, at a point where they had previously, in an informal manner, protested against being called, with an avowal of their intention to adjourn to the point at which they are now assembled, for the reasons that the requisite accommodations could not be had; where there were no facilities for communication with their families or constituents; where they could not



even find the commonest food to eat, unless at an enormous expense, there being no gardens yet made by the squatters ; where the house in which we were expected to assemble had no roof or floor on the Saturday preceding the Monday of our assembling, and for the completion of which the entire Sabbath day and night was desecrated by the continual labor of the mechanics ; where, at least, one half of the members, employees, and almost all others who had assembled there for business or otherwise, had to camp out in wagons and tents during a rainy, hot season, and where cholera broke out, as a consequence of the inadequate food and shelter ; and when, under all of these circumstances of annoyance, they finally passed an act adjourning to this point, Shawnee manual-labor school, where ample accommodations are provided, and where the governor himself had previously made it the seat of government, they were met by his veto, which is herewith transmitted."

Your committee have not considered it any part of their duty to examine and review each enactment and provision of the large volume of laws adopted by the legislature of Kansas upon almost every rightful subject of legislation, and affecting nearly every relation and interest in life, with a view either to their approval or disapproval by Congress, for the reason that they are local laws, confined in their operation to the internal concerns of the Territory, the control and management of which, by the principles of the federal constitution, as well as by the very terms of the Kansas-Nebraska act, are confided to the people of the Territory, to be determined by themselves through their representatives in their local legislature, and not by the Congress, in which they have no representatives to give or withhold their assent to the laws upon which their rights and liberties may all depend. Under these laws marriages have taken place, children have been born, deaths have occurred, estates have been distributed, contracts have been made, and rights have accrued which it is not competent for Congress to divest. If there can be a doubt in respect to the validity of these laws, growing out of the alleged irregularity of the election of the members of the legislature, or the lawfulness of the place where its sessions were held, which it is competent for any tribunal to inquire into with a view to its decision at this day, and after the series of events which have ensued, it must be a judicial question, over which Congress can have no control, and which can be determined only by the courts of justice, under the protection and sanction of the constitution.

When it was proposed in the last Congress to annul the acts of the legislative assembly of Minnesota, incorporating certain railroad companies, this committee reported against the proposition, and, instead of annulling the local legislation of the Territory, recommended the repeal of that clause of the organic act of Minnesota which reserves to Congress the right to disapprove its laws. That recommendation was based on the theory that the people of the Territory, being citizens of the United States, were entitled to the privilege of self-government in obedience to the constitution ; and if, in the exercise of this right, they had made wise and just laws, they ought to be permitted to enjoy all the advantages resulting from them ; while, on the

contrary, if they had made unwise and unjust laws, they should abide the consequences of their own acts until they discovered, acknowledged, and corrected their errors.

It has been alleged that gross misrepresentations have been made in respect to the character of the laws enacted by the legislature of Kansas, calculated, if not designed, to prejudice the public mind at a distance against those who enacted them, and to create the impression that it was the duty of Congress to interfere and annul them. In view of the violent and insurrectionary measures which were being taken to resist the laws of the Territory, a convention of delegates, representing almost every portion of the Territory of Kansas, was held at the city of Leavenworth on the 14th of November, 1855, at which men of all shades of political opinions, "Whigs, Democrats, Pro-slavery men, and Free-state men, all met and harmonized together, and forgot their former differences in the common danger that seemed to threaten the peace, good order, and prosperity of this community." This convention was presided over by the governor of the Territory, assisted by a majority of the judges of the supreme court; and the address to the citizens of the United States, among other distinguished names, bears the signatures of the United States district attorney and marshal for the Territory.

It is but reasonable to assume that the interpretation which these functionaries have given to the acts of the Kansas legislature in this address will be observed in their official exposition and execution of the same. In reference to the wide-spread perversions and misrepresentations of those laws, this address says:

"The laws passed by the legislature have been most grossly misrepresented, with the view of prejudicing the public against that body, and as an excuse for the revolutionary movements in this Territory. The limits of this address will not permit a correction of all these misrepresentations; but we will notice some of them, that have had the most wide-spread circulation.

"It has been charged and widely circulated that the legislature, in order to perpetuate their rule, had passed a law prescribing the qualification of voters, by which it is declared 'that any one may vote who will swear allegiance to the fugitive slave law, the Kansas and Nebraska bill, and pay one dollar.' Such is declared to be the evidence of citizenship, such the qualification of voters. In reply to this, we say that no such law was ever passed by the legislature. The law prescribing the qualification of voters expressly provides that, to entitle a person to vote, he must be twenty-one years of age, an actual inhabitant of this Territory, and of the county or district in which he offers to vote, and shall have paid a Territorial tax. There is no law requiring him to pay a dollar-tax as a qualification to vote. He must pay a tax, it is true, (and this is by no means an unusual requirement in the States;) but whether this tax is levied on his personal or real property, his money at interest, or is a poll-tax, makes no difference; the payment of any Territorial tax entitles the person to vote, provided he has the other qualifications provided by law. The act seems to be carefully drawn, with the view of excluding all illegal and foreign votes. The voter must be an inhabitant of the



Territory, and of the county or district in which he offers to vote, and he must have paid a Territorial tax. The judges and clerks are required to be sworn, and to keep duplicate poll-boxes; and ample provision is made for contesting elections, and purging the polls of all illegal votes. It is difficult to see how a more guarded law could be framed, for the purpose of protecting the purity of elections and the sanctity of the ballot-box. The law does not require the voter to swear to support the fugitive-slave law, or the Kansas and Nebraska bill, unless he is challenged; in that case, he is required to take an oath to support each of these laws. As to the dollar law, (so called,) it is merely a poll-tax, and has no more connexion with the right of suffrage than any other tax levied by the Territorial authority, and is to be paid whether the party votes or not. It is a mere temporary measure, having no force beyond this year, and was resorted to as such to supply the Territorial treasury with the necessary means to carry on the government.

“It has also been charged against the legislature that they elected all of the officers of the Territory for six years. This is without any foundation. They elected no officer for six years; and the only civil officers they retain the election of, that occurs to us at present, are the auditor and treasurer of state, and the district attorneys, who hold their offices for four, and not six years. By the organic act, the commissions issued by the governor to the civil officers of the Territory all expired on the adjournment of the legislature. To prevent a failure in the local administration, and from necessity, the legislature made a number of temporary appointments, such as probate judge, and two county commissioners, and a sheriff of each county. The probate judge and county commissioners constitute the tribunal for the transaction of county business, and are invested with the power to appoint justices of the peace, constables, county surveyor, recorder, and clerk, &c. Probate judges, county commissioners, sheriffs, &c., are all temporary appointments, and are made elective by the people at the first annual election in 1857. The legislature could not have avoided meeting some temporary appointments. No election could have been held without them. There were no judges, justices of the peace, or other officers to conduct an election of any kind, until appointed by the legislature. It was the exercise of a power which the first legislative assembly in every Territory must, of necessity, exercise, in order to put the local government in motion. We see nothing in this to justify revolution or a resort to force. The law for the protection of slave property has also been much misunderstood. The right to pass such a law is expressly stated by Governor Reeder in his inaugural message, in which he says: ‘A territorial legislature may undoubtedly act upon the question to a limited and partial extent, and may temporarily prohibit, tolerate, or regulate slavery in the Territory, and in an absolute or modified form, with all the force and effect of any other legislative act, binding until repealed by the same power that enacted it.’ There is nothing in the act itself, as has been charged, to prevent a free discussion of the subject of slavery. Its bearing on society, its morality or expediency, or whether it would be politic or impolitic to make this a slave State, can be dis-

cussed here as freely as in any State in this Union, without infringing any of the provisions of the law. To deny the right of a person to hold slaves under the law in this Territory is made penal ; but beyond this, there is no restriction to the discussion of the slavery question, in any aspect in which it is capable of being considered. We do not wish to be understood as approving of all the laws passed by the legislature ; on the contrary, we would state that there are some that we do not approve of, and which are condemned by public opinion here, and which will no doubt be repealed or modified at the meeting of the next legislature. But this is nothing more than what frequently occurs, both in the legislation of Congress and of the various State legislatures. The remedy for such evils is to be found in public opinion, to which, sooner or later, in a government like ours, all laws must conform."

A few days after Governor Reeder dissolved his official relations with the legislature, on account of the removal of the seat of government, and while that body was still in session, a meeting was called by "many voters," to assemble at Lawrence on the 14th or 15th of August, 1855, "to take into consideration the propriety of calling a Territorial convention, preliminary to the formation of a State government, and other subjects of public interest." At that meeting the following preamble and resolutions were adopted with but one dissenting voice :

"Whereas the people of Kansas Territory have been since its settlement, and now are, without any law-making power : therefore,

"*Be it resolved*, That we, the people of Kansas Territory, in mass meeting assembled, irrespective of party distinctions, influenced by a common necessity, and greatly desirous of promoting the common good, do hereby call upon and request all *bona-fide* citizens of Kansas Territory, of whatever political views or predilections, to consult together in their respective election districts, and, in mass convention or otherwise, elect three delegates for each representative of the legislative assembly, by proclamation of Governor Reeder of date 10th March, 1855 ; said delegates to assemble in convention at the town of Topeka, on the 19th day of September, 1855, then and there to consider and determine upon all subjects of public interest, and particularly upon that having reference to the speedy formation of a State constitution, with an intention of an immediate application to be admitted as a State into the Union of the United States of America."

This meeting, so far as your committee have been able to ascertain, was the first step in that series of proceedings which resulted in the adoption of a constitution and State government, to be put in operation on the 4th of the present month, in subversion of the Territorial government established under the authority of Congress. The right to set up the State government in defiance of the constituted authorities of the Territory, is based on the assumption "that the people of Kansas Territory have been since its settlement, and now are, without any law-making power ;" in the face of the well-known fact, that the Territorial legislature were then in session, in pursuance of the proclamation of Governor Reeder, and the organic law of the Territory. On the 5th of September, a "Territorial delegate convention" as-

sembled at the Big Springs "to take into consideration the present exigencies of political affairs," at which, among others, the following resolutions were adopted:

*"Resolved,* That this convention, in view of its recent repudiation of the acts of the so-called Kansas legislative assembly, respond most heartily to the call made by the people's convention of the 14th ultimo, for a delegate convention of the people of Kansas, to be held at Topeka, on the 19th instant, to consider the propriety of the formation of a State constitution, and such matters as may legitimately come before it.

*"Resolved,* That we owe no allegiance or obedience to the tyrannical enactments of this spurious legislature; that their laws have no validity or binding force upon the people of Kansas; and that every freeman among us is at full liberty, consistently with his obligations as a citizen and a man, to defy and resist them if he choose so to do.

*"Resolved,* That we will endure and submit to these laws no longer than the best interests of the Territory require, as the least of two evils, and will resist them to a bloody issue as soon as we ascertain that peaceable remedies shall fail, and forcible resistance shall furnish any reasonable prospect of success; and that in the meantime we recommend to our friends throughout the Territory the organization and discipline of volunteer companies, and the procurement and preparation of arms."

With the view to a distinct understanding of the meaning of so much of this resolution as relates to the "organization and discipline of volunteer companies, and the procurement and preparation of arms," it may be necessary to state that there was at that time existing in the Territory a secret military organization, which had been formed for political objects prior to the alleged invasion, at the election on the 30th of March, and which held its first "grand encampment at Lawrence, February 8th, 1855." Your committee have been put in possession of a small printed pamphlet, containing the "constitution and ritual of the grand encampment and regiments of the Kansas legion of Kansas Territory, adopted April 4th, 1855," which, during the recent disturbances in that Territory, was taken on the person of one George F. Warren, who attempted to conceal and destroy the same by thrusting it into his mouth, and biting and chewing it. Although somewhat mutilated by the "tooth prints," it bears internal evidence of being a genuine document, authenticated by the original signatures of "G. W. Hutchinson, grand general," and "J. K. Goodwin, grand quartermaster." On the last page was a charter of the Kansas legion, authorizing the said George F. Warren, from whose mouth the document was taken, to form a new regiment, as follows:

*"Charter of the Kansas Legion.*

"UNITED STATES OF AMERICA, }  
   *Territory of Kansas.*        }

"Know all men by these presents, that we, the Grand Encampment of the Kansas Legion of Kansas Territory, have created, char-



tered, and empowered, and by these presents do create, charter, and empower George F. Warren to be regiment —, No. —, of the Kansas Legion; and, as such, they are hereby invested with all and singular the authority and privileges with which each and every regiment is invested, working under a charter from the Grand Encampment.

"In witness whereof, we have hereunto set our hands this sixteenth day of August, one thousand eight hundred and fifty-five.

"G. W. HUTCHINSON,  
"Grand General.

"J. K. GOODWIN,  
"Grand Quartermaster."

The constitution consists of six articles regulating the organization of the "Grand Encampment," which is "composed of representatives elected from each subordinate regiment existing in the Territory, as hereafter provided. The officers of the Grand Encampment shall consist of a Grand General, Grand Vice-General, Grand Quartermaster, Grand Paymaster, Grand Aid, two Grand Sentinels, and Grand Chaplain.

"The Grand Encampment shall make all nominations for Territorial officers at large, and immediately after such nominations shall have been made, the Grand General shall communicate the result to every regiment in the Territory."

The officers of the "GRAND ENCAMPMENT" are Grand General REV. G. W. Hutchinson, Lawrence, K. T.

Grand Vice-General, C. K. Holliday, Topeka, K. T.

Grand Quartermaster, J. K. Goodwin, Lawrence, K. T.

Grand Paymaster, Charles Leib, M. D., Leavenworth city, K. T.

By "the constitution of the subordinate encampment," "the officers of each subordinate regiment shall consist of a colonel, a lieutenant-colonel, a quartermaster, aid, and two sentinels. The regiment located in each and every election district shall make nominations for all candidates for offices in their respective districts; but where there shall be two or more regiments in any one election district, of whatever kind, these nominations shall be made by delegates from the respective encampments within said district."

The "ritual" continues the order of business and modes of proceeding in the subordinate encampment under the following heads:

1st. Reading the minutes by the quartermaster.

2d. Proposals for new recruits.

3d. Voting for same.

4th. Initiation of recruits.

5th. Reports of committees.

6th. Unfinished business appearing on the minutes.

7th. Miscellaneous business.

8th. Adjournment.

The "opening ceremony" of the subordinate encampments is as follows:

"The colonel, lieutenant-colonel, quartermaster, paymaster, aid,



and sentinels, being in their respective places, the regiment shall be called and thus addressed by the colonel:

"*Colonel.* Fellow-soldiers in the free-State army: The hour has arrived when we must resume the duties devolving upon us. Let us each, with a heart devoted to justice, patriotism, and liberty, attend closely to all the regulations laid down for our government and action; each laboring to make this review pleasant and profitable to ourselves, and a blessing to our country. Aid, are the sentinels at their posts, with closed doors?"

"*Aid.* They are.

"*Colonel.* Aid, you will now review the troops in the regiment's passwords.

"*Aid.* (After examination.) I have examined them personally, and find each correct.

"*Colonel.* I pronounce this regiment arrayed and ready for service."

Then follows the process of initiating new recruits, who are properly vouched for by members of the order, the preliminary obligations to observe secrecy, the catechism to which the candidate is subjected, and the explanations of the colonel in respect to the objects of the order, which are thus stated:

"First, to secure to Kansas the blessing and prosperity of being a free State; and, secondly, to protect the ballot-box from the LEPROUS TOUCH OF UNPRINCIPLED MEN."

These and all other questions being satisfactorily answered, the final oath is thus administered:

"With these explanations upon our part, we shall ask of you that you take with us an obligation placing yourself in the same attitude as before.

#### " OBLIGATION.

"I, — — —, in the most solemn manner, here, in the presence of Heaven and these witnesses, bind myself that I will never reveal, nor cause to be revealed, either by word, look, or sign, by writing, printing, engraving, painting, or in any manner whatsoever, anything pertaining to this institution, save to persons duly qualified to receive the same. I will never reveal the nature of the organization, the place of meeting, the fact that any person is a member of the same, or even the existence of the organization, except to persons legally qualified to receive the same. Should I at any time withdraw, or be suspended or expelled from this organization, I will keep this obligation to the end of life. If any books, papers, or moneys belonging to this organization be intrusted to my care or keeping, I will faithfully and completely deliver up the same to my successor in office, or any one legally authorized to receive them. I will never knowingly propose a person for membership in this order who is not in favor of making *Kansas a free State*, and whom I feel satisfied will exert his entire influence to bring about this result. I will support, maintain, and abide by any honorable movement made by the organization to secure this great end, which will not conflict with the laws of the country and the constitution of the United States. I

will unflinchingly vote for and support the candidates nominated by this organization in preference to any and all others.

"To all of this obligation I do most solemnly promise and affirm, binding myself under the penalty of being expelled from this organization, of having my name published to the several Territorial encampments as a perjurer before Heaven and a traitor to my country, of passing through life scorned and reviled by man, frowned on by devils, forsaken by angels, and abandoned by God."

The "closing ceremony" is as follows:

"[*Colonel.*] Fellow-soldiers: I trust this review has been both pleasant and profitable to all. We met as friends; let us part as brothers, remembering that we seek no wrong to any; and our bond of union in battling for the right must tend to make us better men, better neighbors, and better citizens. We thank you for your kindness and attention, and invite you all to be present at our next review, to be holden at ———, on ——— next, at ——— o'clock p. m. Sentinels, you will open the doors, that our soldiers may retire pleasantly and in order."

Your committee have deemed it important to give this outline of the "constitution and ritual of the grand encampment and regiments of the Kansas legion," as constituting the secret organization, political and military, in obedience to which the public demonstrations have been made to subvert the authority of the Territorial government established by Congress, by setting up a State government, either with or without the assent of Congress, as circumstances should determine. The endorsement of this military organization, and the recommendation by the Big Springs convention for "the procurement and preparation of arms," accompanied with the distinct declaration that "we will resist them [the laws enacted by the Kansas legislature] to a bloody issue, as soon as we ascertain that peaceable remedies shall fail, and forcible resistance shall furnish any reasonable prospect of success," would seem to admit of no other interpretation than that, in the event that the courts of justice shall sustain the validity of those laws, and Congress shall refuse to admit Kansas as a State with the constitution to be formed at Topeka, they will set up an independent government in defiance of the federal authority.

The same purpose is clearly indicated by the other proceedings of this convention, in which it is declared that "we with scorn repudiate the election-law, so called," and nominate Governor Reeder for Congress, to be voted for on a different day from that authorized by law, at an election to be held by judges and clerks not appointed in pursuance of any legal authority, and not to be sworn by any person authorized by law to administer oaths; and the returns to be made, and result proclaimed, and certificate granted, in a mode and by persons not permitted to perform these acts by any law, in or out of the Territory.

In accepting the nomination, Governor Reeder addressed the convention as follows; and, among other things, said:

"In giving him this nomination in this manner, they had strengthened his arms to do their work, and, in return, he would now pledge

to them a steady, unflinching, pertinacity of purpose, never-tiring industry, dogged perseverance, and, in all the abilities with which God had endowed him, to the righting of their wrongs, and the final triumph of their cause. He believed, from the circumstances which had for the last eight months surrounded him, and which had at the same time placed in his possession many facts, and bound him, heart and soul, to the oppressed voters of Kansas, that he could do much towards obtaining a redress of their grievances.

"He said that, day by day, a crisis was coming upon us; that, in after-times, this would be to posterity a turning-point, a marked period, as are to us the opening of the Revolution, the adoption of the Declaration of Independence, and the era of the alien and sedition laws; that we should take each carefully, so that each be a step of progress, and so that no violence be done to the tie which binds the American people together. He alluded to the unprecedented tyranny under which we are and have been; and said that, if any one supposed that institutions were to be imposed by force upon a free and enlightened people, they never knew, or had forgotten, the history of our fathers. American citizens bear in their breasts too much of the spirit of other and trying days, and have lived too long amid the blessings of liberty, to submit to oppression from any quarter: and the man who, having once been free, could tamely submit to tyranny, was fit to be a slave.

"He urged the Free-State men of Kansas to forget all minor issues, and pursue determinedly the one great object, never swerving, but steadily pressing on, as did the wise men who followed the star to the manger, looking back only for fresh encouragement. He counselled that peaceful resistance be made to the tyrannical and unjust laws of the spurious legislature; that appeals to the courts, to the ballot-box, and to Congress, be made for relief from this oppressive load; that violence should be deprecated as long as a single hope of peaceable redress remained; but if, at last, all these should fail—if, in the proper tribunals, there is no hope for our dearest rights, outraged and profaned—if we are still to suffer, that corrupt men may reap harvests watered by our tears—then there is one more chance for justice. God has provided, in the eternal frame of things, redress for every wrong; and there remains to us still the steady eye and the strong arm, and we must conquer, or mingle the bodies of the oppressors with those of the oppressed upon the soil which the Declaration of Independence no longer protects. But he was not at all apprehensive that such a crisis would ever arrive. He believed that justice might be found far short of so dreadful an extremity; and, even should an appeal to arms come, it was his opinion, that if we are well prepared, that moment the victory is won."

In pursuance of the recommendation of the mass meeting held at Lawrence on the 14th of August, and endorsed by the convention held at the Big Springs on the 5th and 6th of September, a convention was held at Topeka on the 19th and 20th of September, at which it was determined to hold another convention at the same place on the fourth Tuesday of October, for the purpose of forming a constitution



and State government: and to this end such proceedings were had as were deemed necessary for giving the notices, conducting the election of delegates, making the returns, and assembling the convention. With regard to the regularity of these proceedings, your committee see no necessity for further criticism than is to be found in the fact that it was the movement of a political party instead of the whole body of the people of Kansas, conducted without the sanction of law, and in defiance of the constituted authorities, for the avowed purpose of overthrowing the Territorial government established by Congress.

The constitutional convention met at Topeka on the fourth Tuesday of October, and organized by electing Colonel J. H. Lane president, who, in returning his acknowledgments for the honor, repudiated the validity of the Territorial legislature and its acts in these words:

"Gentlemen of the convention: For the position assigned me, accept my thanks. You have met, gentlemen, on no ordinary occasion, to accomplish no ordinary purpose. You are the first legal representatives the real settlers of Kansas have ever had. You comprise the first legally elected representative body ever assembled in the Territory," &c.

"*Friday, October 26.*—Mr. Smith offered the following resolution, instructing the standing committees:

"*Resolved*, That the various committees of this convention be, and they are hereby, instructed to frame their work, having in view an immediate organization of a State government."

"*October 30.*—In the evening session the debates ran high upon Mr. Smith's resolution in reference to an immediate State organization. The mover of the resolution was in favor of electing State officers at once. He would advise no hesitation; he would present a bold front, and waver not at all. The Territory was without laws; life and property were unprotected. The Territorial government had broken down. He would not leave it an hour for the action of Congress after an application for admission, but would set up an independent form of government," &c.

Mr. EMERY said: "Now, Mr. Chairman, what does this resolution contemplate? What is proposed to be done? It first proposes to supersede the present weak and inefficient Territorial government, and hence it enunciates the fundamental idea of the constitutional movement. Ay, it does more. It proposes to prove into a fact the leading idea of the Declaration of Independence, the highest human authority in American politics, which is this: whenever any form of government becomes destructive of the ends for which it was instituted, it is the right of the people to alter or abolish it, and to institute a new government. It proposes to force theories of human rights into facts, to practically apply this great principle to the wants and the necessities of the down-trodden people of Kansas. I do not question this right of the people, and certainly no gentleman on this floor will disagree with me. If he does, he occupies a most extraordinary position, and consistency would suggest that he withdraw from this body. No, when we say that we will take measures to supersede and render unnecessary that *thing* now extended over us called a Territorial government—when we



say and maintain that we have a right guarantied by the constitution, to have a form of government resting on our own consent and free will, we are only doing what, as American citizens, we have a right to do; we only propose to carry out the doctrine, much abused and grossly misrepresented as it has been—I mean the doctrine of squatter sovereignty, under which we are assembled here to-day, and in pursuance of the principles of which we hope to extricate ourselves from our present unhappy condition.”

It is but just to state, that, in another part of this same speech, Mr. Emery declared himself opposed to an immediate election “under the new constitution, and an immediate session of the general assembly, when all the wheels of State government shall be put in motion, irrespective of the action of Congress, upon due application for admission. Mr. E. presented his objections to the position of Mr. Smith, and maintained the views above indicated. He contended that, inasmuch as the Territorial form of government was recognised by the Supreme Court of the United States, and hence a legal form of government, no other government could be substituted so long as that was in existence, without risking the most serious consequences, to say the least.”

In reply to the advocates of immediate State organization, Mr. DELAHAY, of Leavenworth, said :

“ Under the defined rights of squatter sovereignty, as enunciated by the Kansas-Nebraska act, it seems reasonable that the people have the right to take upon themselves the burdens of a government ; but I question the right of the people of Kansas to organize a new government created by Congress. The gentleman from Lawrence [Col. Lane] has assumed as a fundamental position, in advocating an immediate State organization, that neither government nor local law exists in this Territory. Sir, I must dissent from that position. I deny, Mr. Chairman, that a Territorial government can be legally abolished by the election of another government. I hold, on the contrary, and I think that my position would be supported by our highest legal authorities, that the power of a Territorial government ceases only by the enactment of the body which created it; in other words, that the government and laws of Kansas can be abolished by Congress alone, and are beyond the reach of this Territory, or any other power. I do not pretend to deny that, as all civil power is derived from the people, they have the moral right to abolish unjust laws, or to overthrow obnoxious governments by force ; but I do question the expediency of effecting a reform in Kansas by any overt act of rebellion. For I must confess, Mr. Chairman, while I cast not the shadow of suspicion on the motives of the advocates of this measure, that from the point of view from which I regard this question, it appears to me to be an act of rebellion.”

Your committee have made these voluminous extracts from the best authenticated reports which they have been able to obtain of the proceedings of the convention, for the purpose of showing that it was distinctly understood on all sides that the adoption of the proposition for organizing the State government before the assent of Congress for the admission of the State should be obtained, was a decision in

favor of repudiating the laws, and overthrowing the Territorial government in defiance of the authority of Congress. By this decision, as incorporated into the schedule to the constitution, the vote on the ratification to the constitution was to be held on the 15th of December, 1855, and the election for all State officers on the third Tuesday of January, 1856. The third section of the schedule is as follows:

"The general assembly shall meet on the 4th day of March, A. D. 1856, at the city of Topeka, at 12 m., at which time and place the governor, lieutenant-governor, secretary of state, judges of supreme court, treasurer, auditor, State printer, reporter and clerk of supreme court, and attorney general, shall appear, take the oath of office, and enter upon the discharge of the duties of their respective offices under this constitution; and shall continue in office in the same manner, and during the same period, they would have done had they been elected on the first Monday of August, A. D. 1856."

The elections for all these officers were held at the times specified; and on the 4th day of the present month the new government was to have been put in operation, in conflict with the Territorial government established by Congress, and for the avowed purpose of subverting and overthrowing the same, without reference to the action of Congress upon their application for admission into the Union.

Your committee are not aware of any case in the history of our own country which can be fairly cited as an example, much less a justification, for these extraordinary proceedings. Cases have occurred in which the inhabitants of particular Territories have been permitted to form constitutions, and take the initiatory steps for the organization of State governments, preparatory to their admission into the Union, without obtaining the previous assent of Congress; BUT IN EVERY INSTANCE THE PROCEEDING HAS ORIGINATED WITH, AND BEEN CONDUCTED IN SUBORDINATION TO, THE AUTHORITY OF THE LOCAL GOVERNMENTS ESTABLISHED OR RECOGNISED BY THE GOVERNMENT OF THE UNITED STATES. Michigan, Arkansas, Florida, and California, are sometimes cited as cases in point. Michigan was erected into a Territory in pursuance of the ordinance of the 13th of July, 1787, as recognised and carried into effect by acts of Congress subsequent to the adoption of the federal constitution. In that ordinance it was provided that the Territory northwest of the Ohio river should be divided into not less than three nor more than five States: "and whenever any of said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State government."

In pursuance of this provision of their organic law, the legislature of the Territory of Michigan passed an act providing for a convention of the people to form a constitution and State government, which was accordingly done in obedience to the laws and constituted authorities of the Territory. The legislature of the Territory of Arkansas, having ascertained by a census that the Territory contained about fifty-one thousand eight hundred inhabitants, at a time when the ratio of representation in Congress awarded one representative to each

forty-seven thousand seven hundred inhabitants, passed an act authorizing the people to form a constitution and ask for admission into the Union, as they supposed they had a right to do under the treaty acquiring the territory from France, which guarantied their admission as soon as may be consistent with the federal constitution. Upon this point your committee adopt the legal opinion of the Attorney General of the United States, (B. F. Butler,) as expressed in the following extract :

“ But I am not prepared to say that all proceedings on this subject, on the part of the citizens of Arkansas, will be illegal. They undoubtedly possess the ordinary privileges and immunities of citizens of the United States. Among these, is the right to assemble and to petition the government for the redress of grievances ; in the exercise of this right, the inhabitants of Arkansas may peaceably meet together in primary assemblies, or in conventions chosen by such assemblies, for the purpose of petitioning Congress to abrogate the Territorial government, and to admit them into the Union as an independent State. The particular form which they may give to their petition cannot be material, so long as they confine themselves to the mere right of petitioning, and conduct all their proceedings in a peaceable manner. And as the power of Congress over the whole subject is plenary and unlimited, they may accept any constitution, however framed, which in their judgment meets the sense of the people to be affected by it. If, therefore, the citizens of Arkansas think proper to accompany their petition with a written constitution, framed and agreed on by their primary assemblies, or by a convention of delegates chosen by such assemblies, I perceive no legal objection to their power to do so, nor to any measures which may be taken to collect the sense of the people in respect to it ; provided, always, that such measures be commenced and prosecuted in a peaceable manner, in strict subordination to the existing Territorial government, and in entire subserviency to the power of Congress to adopt, reject, or disregard them at their pleasure.

“ It is, however, very obvious, that all measures commenced and prosecuted with a design to subvert the Territorial government, and to establish and put in force in its place a new government, without the consent of Congress, will be unlawful. The laws establishing the Territorial government must continue in force until abrogated by Congress ; and, in the meantime, it will be the duty of the governor, and of all the Territorial officers, as well as of the President, to take care that they are faithfully executed.”

On the 11th day of January, 1839, a committee of the constitutional convention of Florida addressed a memorial to Congress, in which they state that in 1837 the Territorial council passed a law submitting to the people the question of “ State ” or “ Territory,” to be decided at the election of delegates to Congress in the month of May of that year ; that a decided majority of the suffrages given at that election was in favor of “ State ; ” that the legislative council of 1838, in obedience to the expressed wishes of the people, enacted a law authorizing the holding of a convention to form and adopt a State constitution ; that the convention assembled on the 3d of De-



ember, 1838, and continued in session until the 11th of January, 1839; and that, on behalf of the people of Florida, they transmit the "constitution, or form of government," and ask for admission into the Union. It is also stated in the memorial that in 1838 a census of the Territory was taken, in obedience to a law passed by the Territorial council, and that this census, although taken during the ravages of Indian hostilities, when a large portion of the inhabitants could not be found at home, showed an aggregate population of forty-eight thousand two hundred and twenty-three persons, which the memorialists insisted furnished satisfactory assurance of a sufficient population to entitle them to admission, according to the treaty acquiring the country from Spain, and the then ratio of representation, which awarded a member of Congress to each 47,700 inhabitants. Congress failing to yield its assent to the admission of Florida for more than six years after this constitution was formed and application made, the people of Florida during all that period remained loyal to the Territorial government, and obedient to its laws, and did not assume the right to supersede the existing government by putting into operation a State government until the assent of Congress was obtained in 1845.

The circumstances connected with the formation of the constitution and State government of California are peculiar. During the Mexican war the country was conquered and occupied by our troops, and the civil government administered by the military authorities under the war power. According to an official communication of General Persifer F. Smith, acting governor of California, to a committee of citizens of San Francisco, under date of March 27, 1849, withholding his "recognition and concurrence" in their proposition "to organize a legislative assembly, and to appoint judges and other ministerial officers, and to enact suitable laws to establish principles of justice and equity, and to give protection to life, liberty, and property," it appears that the President of the United States (Mr. Polk) and his cabinet officially promulgated the following opinions as the decision of the Executive on the points stated :

1st. That at the conclusion of the treaty with Mexico, on the 30th of May, 1848, the military government existing in California was a government *de facto*.

2d. That it, of necessity, continue until Congress provide another ; because, if it cease, anarchy must ensue : thus inferring that no power but Congress can establish any government.

It also appears, from the proclamation of General Riley, acting governor, to the people of California, dated June 3d, 1849, that a government *de facto* was constituted as follows :

"A brief summary of the organization of the present government may not be uninteresting. It consists—First, of a governor appointed by the supreme government; in default of such appointment, the office is temporarily vested in the commanding military officer of the department. The powers and duties of the governor are of a limited character, but fully defined and pointed out by the laws. Second, a secretary, whose duties and powers are also properly defined. Third, a territorial or departmental legislature, with limited powers to pass



laws of a local character. Fourth, a superior court (tribunal superior) of the Territory, consisting of four judges and a fiscal. Fifth, a prefect and sub-prefects for each district, who are charged with the preservation of the public order and the execution of the laws; their duties correspond, in a great measure, with those of district marshals and sheriffs. Sixth, a judge of first instance, for each district. This office is, by a custom not inconsistent with the laws, vested in the first alcalde of the district. Seventh, alcaldes, who have concurrent jurisdiction among themselves in the same district, but are subordinate to the higher judicial tribunals. Eighth, local justices of the peace. Ninth, ayuntamientos, or town councils. The powers and functions of all these officers are fully defined in the laws of the country, and are almost identical with those of the corresponding officers in the Atlantic and Western States."

On the 3d of April, 1849, President Taylor appointed Thomas Butler King agent, for the purpose of conveying important instructions to our military and naval commanders who were intrusted with the administration of the civil government *de facto* in California, and to make known to the people his opinions and wishes in respect to the formation of a constitution and State government preparatory to their admission into the Union. What these opinions and wishes were, are distinctly stated by the President in the following extract from his special message to Congress on the 23d of January, 1850:

"I did not hesitate to express to the people of those Territories my desire that each Territory should, if prepared to comply with the requisitions of the constitution of the United States, form a plan of a State constitution, and submit the same to Congress, with a prayer for admission into the Union as a State; but I did not anticipate, suggest, or authorize the establishment of any such government without the assent of Congress; nor did I authorize any government agent or officer to interfere with or exercise any influence or control over the election of delegates, or over any convention, in making or modifying their domestic institutions, or any of the provisions of their proposed constitution. On the contrary, the instructions by my orders were, that all measures of domestic policy adopted by the people of California must originate solely with themselves; that, while the Executive of the United States was desirous to protect them in the formation of any government republican in its character, to be at the proper time submitted to Congress, yet it was to be distinctly understood that the plan of such a government must, at the same time, be the result of their own deliberate choice, and originate with themselves, without the interference of the Executive."

On the 30th of June, 1850, General Riley, in his capacity as civil governor of California, reports to the government at Washington that—

"On the 3d instant I issued my proclamation to the people of California, defining what was understood to be the legal position of affairs here, and pointing out the course it was deemed advisable to pursue in order to procure a new political organization, better adapted to the character and present condition of the country. The course indicated in my proclamation will be adopted by the people, almost unanimously; and there is now little or no doubt that the convention

will meet on the first of September next, and form a State constitution, to be submitted to Congress in the early part of the coming session.

"A few prefer a Territorial organization, but I think a majority will be in favor of a State government, so as to avoid all further difficulties respecting the question of slavery. This question will probably be submitted, together with the constitution, to a direct vote of the people, in order that the wishes of the people of California may be clearly and fully expressed. Of course, the constitution or plan of a Territorial government formed by this convention can have no legal force till approved by Congress."

On the 12th day of October General Riley, acting governor, issued the following proclamation:

*"To the People of California.*

"The delegates of the people, assembled in convention, have formed a constitution which is now presented for your ratification. The time and manner of voting on this constitution, and of holding the first general election, are clearly set forth in the schedule. The whole subject is therefore left for your unbiased and deliberate consideration.

"The prefect (or person exercising the functions of that office) of each district will designate the places for opening the polls, and give due notice of the election, in accordance with the provisions of the constitution and schedule.

"The people are now called upon to form a government for themselves, and to designate such officers as they desire to make and execute the laws. That their choice may be wisely made, and that the government so organized may secure the permanent welfare and happiness of the people of the new State, is the sincere and earnest wish of the present executive, who, if the constitution be ratified, will with pleasure surrender his powers to whomsoever the people may designate as his successor.

"Given at Monterey, California, this twelfth day of October, in the year of our Lord eighteen hundred and forty-nine.

"B. RILEY,

*"Brevet Brig. Gen. U. S. A., and Governor of California.*

"Official:

H. W. HALLECK,

*"Brevet Captain, and Secretary of State."*

These facts and official papers prove conclusively that the proposition to the people of California to hold a convention and organize a State government, originated with, and that all the proceedings were had in subordination to, the authority and supremacy of the existing local government of the Territory, under the advice and with the approval of the executive government of the United States. Hence the action of the people of California in forming their constitution and State government, and of Congress in admitting the State into the Union, cannot be cited, with the least show of justice or fairness, in justification or palliation of the revolutionary movements to subvert the government which Congress has established in Kansas.

Nor can the insurgents derive aid or comfort from the position assumed by either party to the unfortunate controversy which arose in the State of Rhode Island a few years ago, when an effort was made to change the organic law, and set up a State government in opposition to the one then in existence, under the charter granted by Charles the Second of England. Those who were engaged in that unsuccessful struggle assumed, as fundamental truths in our system of government, that Rhode Island was a sovereign State in all that pertained to her internal affairs; that the right to change their organic law was an essential attribute of sovereignty; that, inasmuch as the charter under which the existing government was organized contained no provision for changing or amending the same, and the people had not delegated that right to the legislature or any other tribunal, it followed, as a matter of course, that they had retained it, and were at liberty to exercise it in such manner as to them should seem wise, just, and proper.

Without deeming it necessary to express any opinion on this occasion in reference to the merits of that controversy, it is evident that the principles upon which it was conducted are not involved in the revolutionary struggle now going on in Kansas; for the reason, that the sovereignty of a Territory remains in abeyance, suspended in the United States, in trust for the people, until they shall be admitted into the Union as a State. In the mean time they are entitled to enjoy and exercise all the privileges and rights of self-government, in subordination to the constitution of the United States, and in obedience to their organic law passed by Congress in pursuance of that instrument. These rights and privileges are all derived from the constitution through the act of Congress, and must be exercised and enjoyed in subjection to all the limitations and restrictions which that constitution imposes. Hence, it is clear that the people of the Territory have no inherent sovereign right under the constitution of the United States to annul the laws and resist the authority of the Territorial government which Congress has established in obedience to the constitution.

In tracing, step by step, the origin and history of these Kansas difficulties, your committee have been profoundly impressed with the significant fact, that each one has resulted from an attempt to violate or circumvent the principles and provisions of the act of Congress for the organization of Kansas and Nebraska. The leading idea and fundamental principle of the Kansas-Nebraska act, as expressed in the law itself, was *to leave the actual settlers and bona-fide inhabitants of each Territory "perfectly free to form and regulate their domestic institutions in their own way, subject only to the constitution of the United States."* While this is declared to be "the true intent and meaning of the act," those who were opposed to allowing the people of the Territory, preparatory to their admission into the Union as a State, to decide the slavery question for themselves, failing to accomplish their purpose in the halls of Congress, and under the authority of the constitution, immediately resorted in their respective States to unusual and extraordinary means to control the political destinies and shape the domestic institutions of Kansas, in defiance of the



wishes and regardless of the rights of the people of that Territory as guarantied by their organic law. Combinations in one section of the Union to stimulate an unnatural and false system of emigration, with the view of controlling the elections, and forcing the domestic institutions of the Territory to assimilate to those of the non-slaveholding States, were followed, as might have been foreseen, by the use of similar means in the slaveholding States, to produce directly the opposite result. To these causes, and to these alone, in the opinion of your committee, may be traced the origin and progress of all the controversies and disturbances with which Kansas is now convulsed.

If these unfortunate troubles have resulted as natural consequences from unauthorized and improper schemes of foreign interference with the internal affairs and domestic concerns of the Territory, it is apparent that the remedy must be sought in a strict adherence to the principles, and rigid enforcement of the provisions, of the organic law. In this connexion your committee feel sincere satisfaction in commending the messages and proclamation of the President of the United States, in which we have the gratifying assurance that the supremacy of the laws will be maintained; that rebellion will be crushed; that insurrection will be suppressed; that aggressive intrusion for the purpose of deciding elections, or any other purpose, will be repelled; that unauthorized intermeddling in the local concerns of the Territory, both from adjoining and distant States, will be prevented; that the federal and local laws will be vindicated against all attempts of organized resistance; and that the people of the Territory will be protected in the establishment of their own institutions, undisturbed by encroachments from without, and in the full enjoyment of the rights of self-government assured to them by the constitution and the organic law.

In view of these assurances, given under the conviction that the existing laws confer all the authority necessary to the performance of these important duties, and that the whole available force of the United States will be exerted to the extent required for their performance, your committee repose in entire confidence that peace, and security, and law, will prevail in Kansas. If any further evidence were necessary to prove that all the collisions and difficulties in Kansas have been produced by the schemes of foreign interference which have been developed in this report, in violation of the principles and in evasion of the provisions of the Kansas-Nebraska act, it may be found in the fact that in Nebraska, to which the emigrant aid societies did not extend their operations, and into which the stream of emigration was permitted to flow in its usual and natural channels, nothing has occurred to disturb the peace and harmony of the Territory, while the principle of self-government, in obedience to the constitution, has had fair play, and is quietly working out its legitimate results.

It now only remains for your committee to respond to the two specific recommendations of the President in his special message. They are as follows:

"This, it seems to me, can be best accomplished by providing that, when the inhabitants of Kansas may desire it, and shall be of sufficient numbers to constitute a State, a convention of delegates, duly



elected by the qualified voters, shall assemble to frame a constitution, and thus prepare, through regular and lawful means, for its admission into the Union as a State. I respectfully recommend the enactment of a law to that effect.

“I recommend, also, that a special appropriation be made to defray any expense which may become requisite in the execution of the laws or the maintenance of public order in the Territory of Kansas.”

In compliance with the first recommendation, your committee ask leave to report a bill authorizing the legislature of the Territory to provide by law for the election of delegates by the people, and the assembling of a convention to form a constitution and State government preparatory to their admission into the Union on an equal footing with the original States, so soon as it shall appear, by a census to be taken under the direction of the governor, by the authority of the legislature, that the Territory contains ninety-three thousand four hundred and twenty inhabitants—that being the number required by the present ratio of representation for a member of Congress.

In compliance with the other recommendation, your committee propose to offer to the appropriation bill an amendment appropriating such sum as shall be found necessary, by the estimates to be obtained, for the purpose indicated in the recommendation of the President.

All of which is respectfully submitted to the Senate by your committee.

## MINORITY REPORT,

Submitted by Mr. COLLAMER, and ordered to be printed with the report of the committee.

*Views of the minority of the Committee on Territories, to whom was referred so much of the annual message of the President as relates to Territorial affairs, the message of the President of 24th January in relation to Kansas Territory, and the message of the President of the 18th February, in answer to the resolution of the Senate of the 4th February, relative to affairs in Kansas.*

Thirteen of the present prosperous States of this Union passed through the period of apprenticeship or pupilage of territorial training, under the guardianship of Congress, preparatory to assuming their proud rank of manhood as sovereign and independent States. This period of their pupilage was, in every case, a period of the good offices of parent and child, in the kind relationship sustained between the national and the Territorial government, and may be remembered with feelings of gratitude and pride. We have fallen on different times. A Territory of our government is now convulsed with violence and discord, and the whole family of our nation is in a state of excitement and anxiety. The national executive power is put in motion, the army in requisition, and Congress is invoked for interference.

In this case, as in all others of difficulty, it becomes necessary to inquire what is the true *cause* of existing trouble, in order to apply effectual cure. It is but temporary palliatives to deal with the external and more obvious manifestations and developments, while the real, procuring cause lies unattended to, and uncorrected, and unremoved.

It is said that organized opposition to law exists in Kansas. That, if existing, may probably be suppressed by the President, by the use of the army; and so, too, may invasions by armed bodies from Missouri, if the Executive be sincere in its efforts; but when this is done, while the cause of trouble remains, the results will continue with renewed and increased developments of danger.

Let us, then, look fairly and undisguisedly at this subject, in its true character and history. Wherein does this Kansas Territory differ from all our other Territories, which have been so peacefully and successfully carried through, and been developed into the manhood of independent States? Can that difference account for existing troubles? Can that difference, as a cause of trouble, be removed?

The first and great point of difference between the Territorial government of Kansas and that of the thirteen Territorial governments before mentioned, consists in the subject of slavery, the undoubted cause of present trouble.

The action of Congress in relation to all those thirteen Territories

was conducted on a uniform and prudent principle, to wit: To settle, by a clear provision, the law in relation to the subject of slavery to be operative in the Territory, while it remained such; not leaving it in any one of those cases to be a subject of controversy within the same, while in the plastic gristle of its youth. This was done by Congress in the exercise of the same power which moulded the form of their organic laws, and appointed their executive and judiciary, and sometimes their legislative officers. It was the power provided in the constitution, in these words: "Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States." Settling the subject of slavery while the country remained a Territory, was no higher exercise of power in Congress than the regulation of the functions of the Territorial government, and actually appointing its principal functionaries. This practice commenced with this national government, and was continued, with uninterrupted uniformity, for more than *sixty* years. This practical contemporaneous construction of the constitutional *power* of this government is too clear to leave room for doubt, or opportunity for scepticism. The peace, prosperity and success which attended this course, and the results which have ensued, in the formation and admission of the thirteen States therefrom, are most conclusive and satisfactory evidence, also, of the wisdom and prudence with which this *power* was *exercised*. Deluded must be that people who, in the pursuit of plausible theories, become deaf to lessons, and blind to the results of their own experience.

Let us next inquire by what rule of uniformity Congress was governed, in the exercise of this power of determining the condition of each Territory as to slavery, while remaining a Territory, as manifested in those thirteen instances. An examination of our history will show that this was not done from time to time by agitation and local or party triumphs in Congress. The rule pursued was uniform and clear; and whoever may have lost by it, peace and prosperity have been gained. That rule was this:

Where slavery was actually existing in a country to any considerable or general extent, it was (though somewhat modified as to further importation in some instances, as in Mississippi and Orleans Territories) suffered to remain. The fact that it had been taken and existed there was taken as an indication of its adaptation and local utility. Where slavery did not in fact exist to any appreciable extent, the same was, by Congress, expressly prohibited; so that in either case the country settled up without difficulty or doubt as to the character of its institutions. In no instance was this difficult and disturbing subject left to the people who had and who might settle in the Territory, to be there an everlasting bone of contention, so long as the Territorial government should continue. It was ever regarded, too, as a subject in which the whole country had an interest, and, therefore, improper for local legislation.

And though whenever the people of a Territory come to form their own organic law, as an independent State, they would, either before or after their admission as a State, form and mould their institutions,



as a sovereign State, in their own way, yet it must be expected, and has always proved true, that the State has taken the character her pupilage has prepared her for, as well in respect to slavery as in other respects. Hence, six of the thirteen States are free States, because slavery was prohibited in them by Congress while Territories, to wit: Ohio, Indiana, Illinois, Michigan, Wisconsin, and Iowa. Seven of the thirteen are slave-holding States, because slavery was allowed in them by Congress while they were Territories, to wit: Tennessee, Alabama, Mississippi, Florida, Louisiana, Arkansas, and Missouri.

On the 6th of March, A. D. 1820, was passed by Congress the act preparatory to the admission of the State of Missouri into the Union. Much controversy and discussion arose on the question whether a prohibition of slavery within said State should be inserted, and it resulted in this: that said State should be admitted without such prohibition, but that slavery should be *forever prohibited* in the rest of that country ceded to us by France lying north  $36^{\circ} 30'$  north latitude, and it was so done. This contract is known as the *Missouri compromise*. Under this arrangement, Missouri was admitted as a slaveholding State, the same having been a slaveholding Territory. Arkansas, south of the line, was formed into a Territory, and slavery allowed therein, and afterwards admitted as a slaveholding State. Iowa was made a Territory, north of the line, and, under the operation of the law, was settled up without slaves, and admitted as a free State. The country now making the Territories of Kansas and Nebraska, in 1820, was almost or entirely uninhabited, and lay north of said line, and whatever settlers entered the same before 1854 did so under that law, forever forbidding slavery therein.

In 1854 Congress passed an act establishing two new Territories—Nebraska and Kansas—in this region of country, where slavery had been prohibited for more than thirty years; and, instead of leaving said law against slavery in operation, or prohibiting or expressly allowing or establishing slavery, Congress left the subject in said Territories, to be discussed, agitated, and legislated on, from time to time, and the elections in said Territories to be conducted with reference to that subject, from year to year, so long as they should remain Territories; for, whatever laws might be passed by the Territorial legislatures on this subject, must be subject to change or repeal by those of the succeeding years. In most former Territorial governments, it was provided by law that their laws were subject to the revision of Congress, so that they would be made with caution. In these Territories that was omitted.

The provision in relation to slavery in Nebraska and Kansas is as follows: "The eighth section of the act preparatory to the admission of Missouri into the Union (which being inconsistent with the *principle* of non-intervention by Congress with slavery in the States and Territories, as required by the legislation of 1850, commonly called the compromise measures) is hereby declared *inoperative and void*; it being the true intent and meaning of this act not to legislate slavery into said Territory or State, nor to exclude it therefrom, but to leave the people thereof *perfectly free* to form and regulate their

domestic institutions in their own way, subject only to the constitution of the United States: *Provided*, That nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the act of 6th March, 1820, either protecting, establishing, prohibiting, or abolishing slavery."

Thus it was promulgated to the people of this whole country that here was a clear field for competition—an open course for the race of rivalry; the goal of which was, the ultimate establishment of a sovereign State; and the prize, the reward of everlasting liberty and its institutions on the one hand, or the perpetuity of slavery and its concomitants on the other. It is the obvious duty of this government, while this law continues, to see this manifesto faithfully and honorably and honestly performed, even though its particular supporters may see cause of a result unfavorable to their hopes.

It is further to be observed, that in the performance of this novel experiment, it was provided that all white men who became inhabitants in Kansas were entitled to vote without regard to their *time of residence*, usually provided in other Territories. Nor was this right of voting confined to American citizens, but included all such aliens as had declared, or would declare, on oath, their intention to become citizens. Thus was the proclamation to the world to become inhabitants of Kansas, and enlist in this great enterprise, by the force of numbers, by vote, to decide for it the great question. Was it to be expected that this great proclamation for the political tournament would be listened to with indifference and apathy? Was it prepared and presented in that spirit? Did it relate to a subject on which the people were cool or indifferent? A large part of the people of this country look on domestic slavery as "only evil, and that continually," alike to master and to slave, and to the community; to be left alone to the management or enjoyment of the people of the States where it exists, but not to be extended, more especially as it gives, or may give, political supremacy to a minority of the people of this country in the United States government. On the other hand, many of the people of another part of the United States regard slavery, if not in the abstract a blessing, at least as now existing, a condition of society best for both white and black, while they exist together; while others regard it as no evil, but as the highest state of social condition. These consider that they cannot, with safety to their interests, permit political ascendancy to be largely in the hands of those unfriendly to this *peculiar institution*. From these conflicting views, long and violent has been the controversy, and experience seems to show it interminable.

Many, and probably a large majority of this nation, lovers of quiet, entertained the hope that, after 1850, the so-called compromise measures, even though not satisfactory to the free States, would be kept by their supporters, and made by them what they were professed to be, a finality on the subject of the extent and limitations of slave territory; more especially after the assurances contained in the inaugural address of President Pierce. This hope was fortified with the consideration that at that time Congress had, by different provisions, settled by law the condition of freedom or slavery for all the territory of the United States. These hopes have been disappointed,

and, from this very provision for repose has been extracted a *principle* for disturbing the condition of things on which its foundation of finality rested—that is, the permanence and continuance of the then existing condition of legal provisions. The establishment of the Territorial governments for Utah and New Mexico, without a prohibition of slavery, was sustained by many on the ground that no such provision was required for its exclusion, as the condition of the country and its laws was a sufficient barrier; and therefore they sustained them, because it would complete the series, and finish the provisions as to slavery in all our territory, and make an end of controversy on that subject: yet, in 1854 it was insisted by the friends and supporters of the laws of 1850, and it is actually asserted in the law establishing the Territorial government of Kansas, that the laws for New Mexico and Utah being of the compromise measures, adopt and contain a *principle* utterly at war with their great and professed object of finality; and that, instead of completing and ending the provisions of congressional action for the Territories as to slavery, it really declared a *principle* which *unsettled* all those where slavery had been prohibited, and rendered it proper, and only proper, to declare such prohibitions all “*inoperative and void.*” The spirit and feeling which thus perverted those *compromise laws*, and made them the direct instrument of renewed disturbance, could not be expected then to leave the result to the decision of the people of Kansas with entire inactivity and indifference.

The slaveholding States in 1820 secured the admission of Missouri as a slaveholding State, and all the region south of 36° 30', to the same purpose, by agreeing and enacting that all north of that line should be *forever free*; and by this they obtained only a sufficient number of votes from the free States, as counted with theirs, to adopt it. In 1850 they agreed that if New Mexico and Utah were made Territories, without a prohibition of slavery, it would, with the laws already made for the rest of our territory, settle forever the whole subject. This proposition, for such a termination, also secured votes from the free States, enough, with their own from the slaveholding States, to adopt it. In 1854, in utter disregard of these repeated contracts, both these arrangements were broken, and both these compromises disregarded, and all their provisions for freedom declared inoperative and void, by the vote of the slaveholding States, with a very few honorable exceptions, and a minority of the votes of the free States. After this extraordinary and inexcusable proceeding, it was not to be expected that the people of the slaveholding States would take no active measures to secure a favorable result by votes in the Territory of Kansas. Neither could it be expected that the people of the free States, who regarded the act of 1854 as a double breach of faith, would sit down and make no effort, by legal means, to correct it.

It has been said that the repeal of this provision of the Missouri compromise, and breach of the compromise of 1850, should not be regarded as a measure of the slaveholding States, because it was presented by a senator from a free State.

The actions or votes of one or more individual men cannot give character to or be regarded as fixing a measure on their section or



party. The only true or honest mode of determining whether any measure is that of any section or party is, to ascertain whether the *majority* of that section or party voted for it. Now, a large majority—indeed, the whole, with a few rare exceptions—of the representatives from the slaveholding States voted for that repeal. On the other hand, a majority of the representatives from the free States voted against it.

This subject of slavery in the Territories, which has violently agitated the country for many years, and which has been attempted to be settled twice by compromise, as before stated, does not remain settled. The Missouri compromise and the supposed finality by the acts of 1850 are scattered and dissolved by the vote of the slaveholding States; and it is not to be disguised that this uncalled for and disturbing measure has produced a spirit of resentment, from a feeling of its injustice, which, while the cause continues, will be difficult to allay.

This subject, then, which Congress has been unable to settle in any such way as the slave States will sustain, is now turned over to those who have or shall become inhabitants of Kansas to arrange; and all men are invited to participate in the experiment, regardless of their character, political or religious views, or place of nativity.

Now, what is the *right* and the *duty* of the people of this country in relation to this matter? Is it not the right of all who believe in the blessings of slaveholding, and regard it as the best condition of society, either to go to Kansas *as inhabitants*, and by their votes to help settle this good condition of that Territory; or if they cannot so go and settle, is it not their duty, by all lawful means in their power, to promote this object by inducing others like-minded to go? This *right* becomes a *duty* to all who follow their convictions. All who regard an establishment of slavery in Kansas as best for that Territory, or as necessary to their own safety by the political weight it gives in the national government, should use all lawful means to secure that result; and clearly, the inducing men to go there to become permanent inhabitants and voters, and to vote as often as the elections occur in favor of the establishment of slavery, and thus *control* the elections, and preserve it a slave State forever, is neither unlawful nor censurable. It is and would be highly praiseworthy and commendable, because it is using lawful means to carry forward honest convictions of public good. All lawfully associated effort to that end is equally commendable. Nor will the application of opprobrious epithets, and calling it *propagandism*, change its moral or legal character from whatever quarter or source, official or otherwise, such epithets may come. Neither should they deter any man from peaceably performing his duty by following his honest convictions.

On the other hand, all those who have seen and realized the blessings of universal liberty, and believe that it can only be secured and promoted by the prohibition of domestic slavery, and that the elevation of honest industry can never succeed where servitude makes labor degrading, should, as in duty bound, put forth all reasonable exertions to advance this great object by lawful means, whenever permitted by laws of their country. When, therefore, Kansas was pre-

sented, by law, as an open field for this experiment, and all were invited to enter, it became the right and duty of all such as desired, to go there as inhabitants for the purpose, by their numbers and by their votes lawfully cast, from time to time, to carry or *control*, in a legal way, the elections there for this object. This could only be lawfully effected by permanent residence, and continued and repeated effort, during the continuance of the Territorial government, and permanently remaining there to form and preserve a free-State constitution. All those who entertained the same sentiments, but were not disposed themselves to go, had the right and duty to use all lawful means to encourage and promote the object. If the purpose could be best effected by united efforts, by voluntary associations or corporations, or by State assistance, as proposed in some southern States, it was all equally lawful and laudable. This was not the officious intermeddling with the internal affairs of another nation, or State, or the territory of another people. The territory is the property of the nation, and is, professedly, open to the settlement and the institutions of every part of the United States. If lawful means, so extensive as to be effectual, were used to people it with a majority of inhabitants opposed to slavery, is now considered as a violation of, or an opposition to, the law establishing the Territory, then the declarations and provisions of that law were but a premeditated delusion, which not only allowed such measures, but actually invited them by enacting that the largest number of the settlers should determine the condition of the country; thus inviting efforts for numbers. Such an invitation must have been expected to produce such efforts on both sides.

It now becomes necessary to inquire what has in fact taken place. If violence has taken place as the natural, and perhaps unavoidable, consequence of the nature of the experiment, bringing into dangerous contact and collision inflammable elements, it was the vice of a mistaken law, and immediate measures should be taken by Congress to correct such law. If force and violence have been substituted for peaceful measures there, legal provisions should be made and executed to correct all the wrong such violence has produced, and to prevent their recurrence, and thus secure a fair fulfilment of the experiment by peaceful means, as originally professed and presented in the law.

A succinct statement of the exercise and progress of the material events in Kansas is this: After the passage of this law, establishing the Territory of Kansas, a large body of settlers rapidly entered into said Territory with a view to permanent inhabitancy therein. Most of these were from the free States of the West and North, who probably intended by their votes and influence to establish there a free State, agreeable to the law which invited them. Some part of those from the northern States had been encouraged and aided in this enterprise by the Emigrant Aid Society, formed in Massachusetts, which put forth some exertions in this laudable object by open and public measures in providing facilities for transportation to all peaceable citizens who desired to become permanent settlers in said Territory, and providing therein hotels, mills, &c., for the public accommodation of that new country.

The governor of Kansas having, in pursuance to law, divided the Territory into districts, and procured a census thereof, issued his proclamation for the election of a legislative assembly therein, to take place on the 30th day of March, 1855, and directed how the same should be conducted, and the returns made to him, agreeable to the law establishing said Territory. On the day of election, large bodies of armed men from the State of Missouri appeared at the polls in most of the districts, and by most violent and tumultuous carriage and demeanor overawed the defenceless inhabitants, and by their own votes elected a large majority of the members of both houses of said assembly. On the returns of said election being made to the governor, protests and objections were made to him in relation to a part of said districts; and as to them, he set aside such, and such only, as by the returns appeared to be bad. In relation to others, covering, in all, a majority of the two houses, equally vicious in fact, but apparently good by formal returns, the inhabitants thereof, borne down by said violence and intimidation, scattered and discouraged, and laboring under apprehensions of personal violence, refrained and desisted from presenting any protest to the governor in relation thereto; and he, then uninformed in relation thereto, issued certificates to the members who appeared by said formal returns to have been elected.

In relation to those districts which the governor so set aside, orders were by him issued for new elections. In one of these districts the same proceedings were repeated by men from Missouri, and in others not, and certificates were issued to the persons elected.

This legislative assembly, so elected, assembled at Pawnee, on the 2d day of July, 1855, that being the time and place for holding said meeting, as fixed by the governor, by authority of law. On assembling, the said houses proceeded to set aside and reject those members so elected on said second election, except in the district where the men from Missouri had, at said election, chosen the same persons they had elected at the said first election, and admitted all of the said first-elected members.

A legislative assembly, so created by military force, by a foreign invasion, in violation of the organic law, was but a usurpation. No act of its own, no act or neglect of the governor, could legalize or sanctify it. Its own decisions as to its own legality are like its laws, but the fruits of its own usurpation, which no governor could legitimate.

They passed an act altering the place of the temporary seat of government to the Shawnee Mission, on the border, and in near proximity to Missouri. This act the governor regarded as a violation of the organic law establishing the Territory, which fixed the temporary seat of government, and prohibited the legislative assembly from doing anything inconsistent with said act. He therefore, and for that cause, vetoed said bill; but said assembly repassed the same by a two-thirds majority, notwithstanding said veto, and removed to said Shawnee Mission. They then proceeded to pass laws, and the governor, in writing, declined further to recognise them as a legitimate assembly,



sitting at that place. They continued passing laws there, from the 16th day of July to the 31st day of August, 1855.

On the 15th day of August last, the governor of said Territory was dismissed from office, and the duties devolved upon the secretary of the Territory; and how many of the laws passed with his official approbation does not appear, the laws as now presented being without date or authentication.

As by the law of Congress organizing said Territory it was expressly provided that the people of the Territory were to be "left perfectly free to form and regulate their domestic institutions in their own way," and among these institutions slavery is included, it was, of course, implied that that subject was to be open and free to public and private discussion in all its bearings, rights, and relationships. Among these must, of course, be the question, What was the state of *the existing laws*, and the modifications that might be required on that subject? The law had declared that its "true intent and meaning was not to legislate slavery into the Territory, or exclude it therefrom." This would, of course, leave to that people the inquiry, What, then, are the existing rights under the constitution? Can slaves be holden, in the absence of any law on the subject? This question, about which so much difference of opinion exists, and which Congress and the courts have never settled, was thus turned over to the people there, to discuss and settle for themselves.

This Territorial legislature, so created by force from Missouri, utterly refused to permit discussion on the subject; but, assuming that slavery already existed there, and that neither Congress nor the people in the Territory, under the authority of Congress, had or could prohibit it, passed a law which, if enforced, utterly prohibits all *discussion* of the question. The eleventh and twelfth sections of that act are as follows:

"SEC. 11. If any person print, write, introduce into, publish or circulate, or cause to be brought into, printed, written, published or circulated, or shall knowingly aid or assist in bringing into, printing, publishing or circulating within this Territory, any book, paper, pamphlet, magazine, hand-bill or circular, containing any statements, arguments, opinions, sentiments, doctrines, advice or innuendo, calculated to promote a disorderly, dangerous or rebellious disaffection among the slaves in this Territory, or to induce such slaves to escape from the service of their masters or to resist their authority, he shall be guilty of a felony, and be punished by imprisonment and hard labor for a term not less than five years.

"SEC. 12. If any free person, by speaking or by writing, assert or maintain that persons have not the right to hold slaves in this Territory, or shall introduce into this Territory, print, publish, write, circulate, or cause to be introduced into this Territory, written, printed, published or circulated in this Territory, any book, paper, magazine, pamphlet or circular, containing any denial of the right of persons to hold slaves in this Territory, such person shall be deemed guilty of felony, and punished by imprisonment at hard labor for a term of not less than two years." And further providing, that no person "con-

scientiously opposed to holding slaves'' shall sit as a juror in the trial of any cause founded on a breach of the foregoing law. They further provided, that all officers and attorneys should be sworn not only to support the constitution of the United States, but also to support and sustain the organic law of the Territory, and the fugitive slave laws; and that any person offering to vote shall be presumed to be entitled to vote until the contrary is shown, and if any one, when required, shall refuse to take oath to sustain the fugitive slave laws, he shall not be permitted to vote. Although they passed a law that none but an inhabitant, who had paid a tax, should vote, yet they required no *time of residence* necessary, and provided for the immediate payment of a poll-tax; so providing, in effect, that on the eve of an election the people of a neighboring State could come in, in unlimited numbers, and, by taking up a residence of a day or an hour, pay a poll-tax, and thus become legal voters, and then, after voting, return to their own State. They thus, in practical effect, provided for the people of Missouri to control elections at their pleasure, and permitted such only of the real inhabitants of the Territory to vote as are friendly to the holding of slaves.

They permitted no election of any of the officers in the Territory to be made by the people thereof, but created the offices and filled them, or appointed officers to fill them for long periods, and provided that the next annual election should be holden in October, 1856, and the assembly to meet in January, 1857; so that none of these laws could be changed until the lower house might be changed, in 1856; but the council, which is elected for two years, could not be changed so as to allow a change of the laws or officers until the session of 1858, however much the inhabitants of the Territory might desire it.

These laws, made by an assembly created by a foreign force, are but a manifestation of the spirit of oppression which was the parent of the whole transaction. No excuse can be found for it in the pretence that the inhabitants had carried with them into said Territory a quantity of Sharpe's rifles—first, because that, if true, formed no excuse; secondly, it is untrue, as their Sharpe's rifles were only obtained afterwards, and entirely for the purpose of self-defence, the necessity for which, this invasion and other acts of violence and threats clearly demonstrated. These laws were obviously made to oppress and drive out all who were inclined to the exclusion of slavery; and if they remained, to silence them on this subject, and subject them to the will and control of the people of Missouri. These are the laws which the President says must be enforced by the army and whole power of this nation.

The people of Kansas, thus invaded, subdued, oppressed, and insulted, seeing their Territorial government (such only in form) perverted into an engine to crush them in the dust, and to defeat and destroy the professed object of their organic law, by depriving them of the "*perfect freedom*" therein provided; and finding no ground to hope for rights in that organization, they proceeded, under the guaranty of the United States constitution, "peaceably to assemble to petition the government for the redress of (their) grievances." They

saw no earthly source of relief but in the formation of a State government by the people, and the acceptance and ratification thereof by Congress.

It is true that in several instances in our political history, the people of a Territory have been authorized by an act of Congress to form a State constitution, and after so doing, were admitted by Congress. It is quite obvious that no such authority could be given by the act of the Territorial government. *That* clearly has no power to create another government, paramount to itself. It is equally true, that, in numerous instances in our history, the people of a Territory have, without any previous act of Congress, proceeded to call a convention of the people by their delegates; have formed a State constitution, which has been adopted by the people, and a State legislature assembled under it, and chosen senators to Congress, and then have presented said constitution to Congress, who has approved the same, and received the senators and members of Congress who were chosen under it before Congress had approved the same. Such was the case of Tennessee; such was the case of Michigan, where the people not only formed a State constitution without an act of Congress, but they actually put their State government into full operation and passed laws, and it was approved by Congress by receiving it as a State. The people of Florida formed their constitution without any act of Congress therefor, six years before they were admitted into the Union. When the people of Arkansas were about forming a State constitution without a previous act of Congress, in 1835, the Territorial governor applied to the President on the subject, who referred the matter to the Attorney General, and his opinion, as then expressed and published, contained the following:

"It is not in the power of the general assembly of Arkansas to pass any law for the purpose of electing members to a convention to form a constitution and State government, nor to do any other act, directly or indirectly, to create such government. Every such law, even though it were approved by the governor of the Territory, would be null and void; if passed by them notwithstanding his veto, by a vote of two-thirds of each branch, it would still be equally void." He further decided that it was not rebellious or insurrectionary, or even unlawful, for the people peaceably to proceed, even without an act of Congress, in forming a constitution, and that the so forming a State constitution, and so far organizing under the same as to choose the officers necessary for its representation in Congress, with a view to present the same to Congress for admission, was a power which fell clearly within the right of the people to assemble and petition for redress. The people of Arkansas proceeded without an act of Congress, and were received into the Union accordingly. If any rights were derived to the people of Arkansas from the terms of the French treaty of cession, they equally extended to the people of Kansas, it being a part of the same cession.

In this view of the subject, in the first part of August, 1855, a call was published in the public papers for a meeting of the citizens of Kansas, irrespective of party, to meet at Lawrence, in said Territory,



on the 15th of said August, to take into consideration the propriety of calling a convention of the people of the whole Territory to consider that subject. That meeting was held on the 15th day of August last, and it proceeded to call such convention of delegates to be elected, and to assemble at Topeka, in said Territory, on the 19th day of September, 1855, not to form a constitution, but to consider the propriety of calling, formally, a convention for that purpose. The proceedings of this meeting of the 15th of August were as follows :

“ *State Constitution.*

“ LAWRENCE, KANSAS TERRITORY.

“ *August 15, 1855.*

“ Pursuant to a published call, signed ‘ Many Citizens,’ ‘ to take into consideration the propriety of calling a Territorial convention, preliminary to the formation of a State government, and other subjects of public interest,’ a convention of the citizens of Kansas Territory, *irrespective* of party, met, and upon motion of C. K. Holliday, Dr. A. Hunting was called to the chair, G. W. Brown, E. D. Ladd, C. E. Blood, L. P. Lincoln, James Christian, and Dr. J. D. Barnes elected vice presidents, and J. K. Goodin and J. P. Fox, secretaries.

“ On motion of J. Hutchinson, esq., a committee of five were appointed to prepare business for the convention. Messrs. G. W. Smith, C. K. Holliday, C. Robinson, John Brown, jr., and A. F. Powell were chosen that committee.

“ During the absence of the committee, the convention was addressed by Rev. Lovejoy, G. W. Brown, J. Hutchinson, and M. F. Conway. After which, Mr. G. W. Smith, chairman, submitted the following as the report of the committee :

“ Whereas the people of Kansas Territory have been, since its settlement, and now are, without any law-making power ; therefore, be it

“ *Resolved*, That we, the people of Kansas Territory, in mass meeting assembled, *irrespective* of party distinctions, influenced by a common necessity, and greatly desirous of promoting the common good, do hereby call upon and request all *bona fide* citizens of Kansas Territory, of whatever political views or predilections, to consult together in their respective election districts, and in mass convention, or otherwise, elect three delegates for each representative to which such district is entitled in the House of Representatives of the legislative assembly, by proclamation of Governor Reeder of date 10th March, 1855 ; said delegates to assemble in convention at the town of Topeka, on the 19th day of September, 1855, then and there to consider and determine upon all subjects of public interest, and *particularly* upon that having reference to the speedy formation of a State constitution, with an intention of an immediate application to be admitted as a State into the Union of the ‘ United States of America.’

“ After the discussion of the resolution by Mr. Stearns and others, the report of the committee was adopted with but *one* dissenting voice.

“ On motion, it was ordered that the proceedings of this convention be published in the newspapers of the Territory, and Messrs. J. Speer,

R. G. Elliott, and G. W. Brown, were appointed a committee to publish and circulate the call for the convention to be holden at Topeka.

“On motion, the convention adjourned *sine die*.

“A. HUNTING, *President*.

“G. W. BROWN,

“E. D. LADD,

“C. E. BLOOD,

“L. P. LINCOLN,

“JAS. CHRISTIAN,

“J. D. BARNES,

“*Vice Presidents*.

“J. K. GOODIN,

“J. P. FOX,

“*Secretaries*.”

Agreeable to these proceedings, the people of the different districts did, as therein recommended, proceed to appoint delegates to this meeting at Topeka, to be holden on said 19th day of September, 1855. The delegates so appointed did assemble at Topeka on said day, and proceeded to consider said subject, and they took the following proceedings :

“*Proceedings of the State Constitutional Convention, held at Topeka, Kansas Territory, September 19-20, 1855.*”

“Whereas the constitution of the United States guaranties to the people of this republic the right of assembling together in a peaceable manner for the common good, to ‘establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity;’ and whereas the citizens of Kansas Territory were prevented from electing members of a legislative assembly, in pursuance of the proclamation of Governor Reeder, on the 30th of March last, by invading forces from foreign States coming into the Territory and forcing upon the people a legislature of non-residents and others, inimical to the interests of the people of Kansas Territory, defeating the object of the organic act, in consequence of which the Territorial government became a perfect failure, and the people were left without any legal government until their patience has become exhausted, and ‘endurance ceases to be a virtue;’ and they are compelled to resort to the only remedy left—that of forming a government for themselves; therefore,

“*Resolved by the people of Kansas Territory in delegate convention assembled,* That an election shall be held in the several election precincts of this Territory on the second Tuesday of October next, under the regulations and restrictions hereinafter imposed, for members of a convention to form a constitution, adopt a bill of rights for the people of Kansas, and take all needful measures for organizing a State government preparatory to the admission of Kansas into the Union as a State.

“*Resolved,* That the apportionment of delegates to said convention shall be as follows: two delegates for each representative to which the

people were entitled in the legislative assembly by proclamation of Governor Reeder, of date 10th March, 1855.

“*Resolved*, That a committee of seven be appointed by the chair, who shall organize by the appointment of a chairman and secretary. They shall keep a record of their proceedings, and shall have the general superintendence of the affairs of the Territory so far as regards the organization of a State government, which committee shall be styled ‘the executive committee of Kansas Territory.’

“*Resolved*, That it shall be the duty of the executive committee of Kansas Territory to advertise said election at least fifteen days before the second Tuesday of October next; and to appoint three judges thereof for each precinct, and the said judges of each precinct shall appoint two clerks, all of whom shall be duly sworn or affirmed to discharge the duties of their respective offices impartially, and with fidelity; and they shall have power to administer the oath or affirmation to each other, and the said judges shall open said election at 10 o’clock a. m. at the place designated in each precinct by the said executive committee, and close the same at 4 o’clock p. m. And in case any of the officers appointed fail to attend, the officer or officers in attendance shall supply the vacancy or vacancies; and in the event of all of them failing to attend, ten qualified voters shall supply their places. And the said judges shall make out duplicate returns of said election, seal up, and transmit one copy of the same within five days to the chairman of the executive committee, to be laid before the convention, and they shall, within ten days, seal up and hand the other to some member of the executive committee.

“*Resolved*, That the chairman of the executive committee of Kansas Territory shall announce, by proclamation, the names of the persons elected delegates to said convention; and in case the returns from any precinct should not be completed by that day, as soon thereafter as practicable; and in case of a tie, a new election shall be ordered by the executive committee, giving five days’ notice thereof, by the same officers who officiated at the first election.

“*Resolved*, That all white male inhabitants, citizens of the United States, above the age of twenty-one years, who have had a *bona fide* residence in the Territory of Kansas for the space of thirty days immediately preceding the day of said election, shall be entitled to vote for delegates to said convention; and all white male inhabitants, citizens of the United States, above the age of twenty-one years, who have resided in the Territory of Kansas for the space of three months immediately preceding the day of election, shall be eligible as delegates to said convention.

“*Resolved*, That if at the time of holding said election it shall be inconvenient, on account of Indian hostilities or any other cause whatever that would disturb or prevent the voters of any election precinct in the Territory from the free and peaceable exercise of the elective franchise, the officers are hereby authorized to adjourn said election into any other precinct in the Territory, and to any other day they may see proper, of the necessity of which they shall be the exclusive judges, at which time and place the qualified voters may cast their votes.



*“Resolved, That said convention shall be held at Topeka on the fourth Tuesday of October next, at 12 o’clock, m., of that day.*

*“Resolved, That a majority of said convention shall constitute a quorum, and that the said convention shall determine upon the returns and qualifications of its members, and shall have and exercise all the rights, privileges, and immunities incident to such bodies, and may adopt such rules and regulations for its government as a majority thereof may direct. If a majority of said convention do not assemble on the day appointed therefor, a less number is hereby authorized to adjourn from day to day.*

*“Resolved, That in case of the death, resignation, or non-attendance of any delegate chosen from any district of the Territory, the president of the convention shall issue his writ ordering a new election, on five days’ notice, to be conducted as heretofore directed.*

*“Resolved, That no person shall be entitled to a seat in the convention at its organization except the members whose names are contained in the proclamation of the chairman of the executive committee. But after the convention is organized, seats may be contested in the usual way.*

*“Resolved, That the members of the convention shall receive, as a compensation for their services, the sum of three dollars per day, and three dollars for every twenty miles’ travel to and from the same, and that Congress be respectfully requested to appropriate a sufficient sum to defray the necessary expenses of said convention.*

*“Resolved, That on the adoption of a constitution for the State of Kansas, the president of the convention shall transmit an authenticated copy thereof to the President of the United States, to the President of the Senate, and to the Speaker of the House of Representatives; to each member of Congress, and to the governor of each of the several States in the Union; and adopt such other measure as will secure to the people of Kansas the rights and privilege of a sovereign State.*

*“On motion, the committee on address was vested with authority to notify the people of the several districts of the Territory of the coming election, by handbills, public addresses, and otherwise as they may think proper.*

*“The Territorial executive committee was appointed by the chair, consisting of the following persons: J. H. Lane, C. K. Holliday, M. J. Parrott, P. C. Schnyler, G. W. Smith, G. W. Brown, and J. K. Goodin.*

*“On motion, the proceedings of this convention were ordered to be published in all the papers of the Territory.*

*“A vote of thanks was passed to the president and officers of the convention.*

*“Adjourned, with three enthusiastic cheers for the new government of Kansas.*

*“WM. Y. ROBERTS, President.*

*“E. D. LADD,*

*“J. H. NESBITT,*

*“M. W. DELAHAY,*

*“Secretaries.”*

“CONSTITUTIONAL PROCLAMATION.

“*To the Legal Voters of Kansas :*

“Whereas the Territorial government as now constituted for Kansas has proved a failure—squatter sovereignty under its workings a miserable delusion, in proof of which it is only necessary to refer to our past history and our present deplorable condition—our ballot-boxes have been taken possession of by bands of armed men from foreign States—our people forcibly driven therefrom—persons attempting to be foisted upon us as members of a so-called legislature, unacquainted with our wants, and hostile to our best interests—some of them never residents of our Territory—misnamed *laws* passed, and now attempted to be enforced by the aid of citizens of foreign States of the most oppressive, tyrannical, and insulting character—the right of suffrage taken from us—debarred from the privilege of a voice in the election of even the most insignificant officers—the right of free speech stifled—the muzzling of the press attempted ; and whereas longer forbearance with such oppression and tyranny has ceased to be a virtue ; and whereas the people of this country have heretofore exercised the right of changing their form of government when it became oppressive, and have at all times conceded this right to the people in this and all other governments ; and whereas a Territorial form of government is unknown to the constitution, and is the mere creature of necessity awaiting the action of the people ; and whereas the debasing character of the slavery which now involves us impels to action, and leaves us as the only legal and peaceful alternative the immediate establishment of a State government ; and whereas the organic act fails in pointing out the course to be adopted in an emergency like ours : Therefore, you are requested to meet at your several precincts in said Territory, hereinafter mentioned, on the second Tuesday of October next, it being the ninth day of said month, and then and there cast your ballots for members of a convention, to meet at Topeka on the fourth Tuesday in October next, to form a constitution, adopt a bill of rights for the people of Kansas, and take all needful measures for organizing a State government preparatory to the admission of Kansas into the Union as a State.

“*Places for Polls.*

“*First election district.*—Lawrence precinct, at the office of John Hutchinson, in Lawrence. Blanton precinct, at the house of J. B. Abbott, in Blanton. Palmyra precinct, at the house of H. Barricklow, in Palmyra—Wakarusa river the dividing line between the two precincts.

“*Second election district.*—Bloomington precinct, house of Harrison Burson, on the Wakarusa. Benicia precinct, house of J. J. Cranmer, East Douglas.

“*Third election district.*—Topeka precinct, house of F. W. Giles, Topeka. Big Springs precinct, at the house of Wesley Frost, in

Washington. Tecumseh precinct, at the house of Mr. Hoagland, in Tecumseh.

*"Fourth election district.*—Willow Springs precinct, at the house of Dr. Chapman, on the Santa Fé road, Springfield.

*"Fifth election district.*—Bull Creek precinct, at the house of Baptiste Peoria, on Pottawatomie creek. Pottawatomie precinct, at the house of Henry Sherman. Osawattamie precinct, at the house of Wm. Hughes, in Osawattamie. Big Sugar Creek precinct, at the house of Elijah Tucker, at old Pottawatomie Mission. Little Sugar Creek precinct, at the house of Isaac Stockton. Neosho precinct, at the store of Hamilton Smith, in Neosho. Hampden precinct, at the house of W. A. Ela, in Hampden.

*"Sixth election district.*—Fort Scott precinct, at the house of Mr. Johnson, or a suitable building in Fort Scott. Scott's Town precinct, at the house of Mr. Vandever.

*"Seventh election district.*—Titus precinct, at the house of J. B. Titus, on the Santa Fé road.

*"Eighth election district.*—Council Grove precinct, at Council Grove Mission House. Waubonsa precinct, at some suitable building in Waubonsa. Mill Creek precinct, at the house of G. E. Hoheneck, on Mill creek. Ashland precinct, at the house of Mr. Adams, in Ashland.

*"Ninth election district.*—Pawnee precinct, at Loden & Shaw's store, in Pawnee.

*"Tenth election district.*—Big Blue precinct, at the house of S. D. Dyer, in Juniatta. Rock creek precinct, at the house of Robert Wilson.

*"Eleventh election district.*—Vermillion precinct, at the house of John Schmidt, on Vermillion branch of Blue river.

*"Twelfth election district.*—St. Mary's precinct, at the house of B. F. Bertrand. Silver lake precinct, at the house of Joseph Leframbois.

*"Thirteenth election district.*—Hickory Point precinct, at the house of Charles Hardt. Falls precinct, at the house of 'Mill Company,' at Grass-hopper Falls.

*"Fourteenth election district.*—Bur-Oak precinct, at the house of Benjamin Harding. Doniphan precinct, (including part of the 15th district to Walnut creek,) at the house of Dr. G. A. Cutler, in Doniphan. Wolf river precinct, at the house of Aaron Lewis.

*"Fifteenth election district.*—Walnut Creek precinct, (south Walnut creek,) at the house of Charles Hays, on military road.

*"Sixteenth election district.*—Leavenworth precinct, at the store of Thomas Doyle, in Leavenworth City. Easton precinct, at the house of Thomas A. Maynard, on Stranger creek. Wyandot precinct, at the council-house, in Wyandot City. Ridge precinct, at the house of Wm. Penneck.

*"Seventeenth election district.*—Mission precinct, at the Baptist mission-building. Wakarusa precinct, at the store of Paschal Fish.

*"Eighteenth election district.*—California precinct, at the house of W. W. Moore, on the St. Joseph and California road.



" INSTRUCTION TO JUDGES OF ELECTION.

" The three judges will provide for each poll, ballot-boxes for depositing the ballots cast by electors ; shall appoint two clerks, all of whom shall be sworn or affirm to discharge the duties of their respective offices impartially and with fidelity ; and the judges and clerks shall have power to administer the oath or affirmation to each other ; and the said judges shall open said election at 10 o'clock a. m., at the place designated in each precinct by the executive committee of Kansas Territory, and close the same at 4 o'clock p. m. In case any of the officers appointed fail to attend, the officer or officers in attendance shall supply their places. And the said judges shall make out duplicate returns of said election ; seal up and transmit one copy of the same within five days to the chairman of the executive committee to be laid before the convention, and they shall within ten days seal up and hand the other to some member of the said executive committee. If at the time of holding said election it shall be inconvenient on account of Indian hostilities, or any other cause whatever, that would disturb or prevent the voters of any election precinct in the Territory from the free and peaceable exercise of the elective franchise, the officers are hereby authorized to adjourn said election into any other precinct in the Territory, and to any other day they may see proper, of the necessity of which they shall be the exclusive judges, at which time and place the qualified voters may cast their votes.

" QUALIFICATION OF VOTERS, &c.

" All white male inhabitants, citizens of the United States, or who have declared their intentions, before the proper authorities, to become such, above the age of twenty-one years, who have had a *bona fide* residence in the Territory for the space of thirty days immediately preceding the day of the said election, shall be entitled to vote for delegates to said convention ; and all white male inhabitants, citizens of the United States, above the age of twenty-one years, who have had a *bona fide* residence in the Territory of Kansas for the space of three months immediately preceding the day of election, shall be eligible as delegates to said convention.

" APPORTIONMENT.

" The apportionment of delegates to said convention shall be as follows : Two delegates for each representative to which the people were entitled in the legislative assembly, by proclamation of Governor Reeder of date of March 10, 1855.

" It is confidently believed that the people of Kansas are fully alive to the importance of the step they are about to take in disenthraling themselves from the slavery which is now fettering them ; and the *squatters of Kansas* are earnestly requested to be at their several polls on the day above designated. See that there be no illegal votes cast, and that every ballot received be in accordance with your choice for delegate to the constitutional convention, and have all the regulations and restrictions carried out.

“The plan proposed in the proclamation to govern you in the election has been adopted after mature deliberation, and, if adhered to by you, will result in establishing in Kansas an independent government that will be admitted into our beloved Union as a sovereign State, securing to our people the liberty they have heretofore enjoyed, and which has been so ruthlessly wrested from them by reckless invaders.

“By order of the executive committee of Kansas Territory :

“J. H. LANE, *Chairman*.

“J. K. GOODIN, *Secretary*.”

Delegates were elected agreeably to the proclamation so issued, and they met at Topeka on the fourth Tuesday in October, 1855, and formed a constitution, which was submitted to the people, and was ratified by them by vote in the districts. An election of State officers and members of the State legislature has been had, and a representative to Congress elected, and it is intended to proceed to the election of senators, with the view to present the same, with the constitution, to Congress for admission into the Union.

Whatever views individuals may at times, or in meetings, have expressed, and whatever ultimate determination may have been entertained in the result of being spurned by Congress, and refused redress, is now entirely immaterial. That cannot condemn or give character to the proceedings thus far pursued.

Many may have honestly believed usurpation could make no law, and that if Congress made no further provisions they were well justified in forming a law for themselves ; but it is not now necessary to consider that matter, as it is to be hoped that Congress will not leave them to such a necessity.

Thus far this effort of the people for redress is peaceful, constitutional, and right. Whether it will succeed, rests with Congress to determine ; but clear it is that it should not be met and denounced as revolutionary, rebellious, insurrectionary, or unlawful, nor does it call for or justify the exercise of any force by any department of this government to check or control it.

It now becomes proper to inquire what should be done by Congress ; for we are informed by the President, in substance, that he has no power to correct a usurpation, and that the laws, even though made by usurped authority, must be by him enforced and executed, even with military force. The measures of redress should be applied to the true cause of the difficulty. This obviously lies in the repeal of the clause for freedom in the act of 1820, and therefore the true remedy lies in the entire repeal of the act of 1854, which effected it. Let this be done with frankness and magnanimity, and Kansas be organized anew, as a free Territory, and all will be put right.

But if Congress insist on proceeding with the experiment, then declare all the action by this spurious foreign legislative assembly utterly inoperative and void, and direct a reorganization, providing proper safeguard for legal voting and against foreign force.

There is, however, another way to put an end to all this trouble

there, and in the nation, without retracing steps or continuing violence, or by force compelling obedience to tyrannical laws made by foreign force; and that is, by admitting that Territory as a State, with her free constitution. True, indeed, her numbers are not such as gives her a right to demand admission, being, as the President informs us, probably only about twenty-five thousand. The constitution fixes no number as necessary, and the importance of *now* settling this question may well justify Congress in admitting this as a State, *at this time*, especially as we have good reason to believe, that if admitted as a State, and controversy ended, it will immediately fill up with a numerous and successful population.

At any rate, it seems impossible to believe that Congress is to leave that people without redress, to have enforced upon them by the army of the nation these measures and laws of violence and oppression. Are they to be dragooned into submission? Is that an experiment pleasant to execute on our own free people?

The true character of this transaction is matter of extensive notoriety. Its essential features are too obvious to allow of any successful disguise or palliation, however complicated or ingenious may be the statements, or however special the pleadings, for that purpose. The case requires some quieting, kind, and prudent treatment by the hand of Congress to do justice and satisfy the nation. The people of this country are peacefully relying on Congress to provide the competent measures of redress which they have the undoubted power to administer.

The Attorney General, in the case of Arkansas, says: "Congress may at pleasure repeal or modify the laws passed by the Territorial legislature, and may at any time abrogate and remodel the legislature itself, and all the other departments of the Territorial government."

Treating this grievance in Kansas with ingenious excuses, with neglect or contempt, or riding over the oppressed with an army, and dragooning them into submission, will make no satisfactory termination. Party success may at times be temporarily secured by adroit devices, plausible pretences, and partisan address; but the permanent preservation of this Union can be maintained only by frankness and integrity. Justice may be denied where it ought to be granted; power may perpetuate that vassalage which violence and usurpation have produced; the subjugation of white freemen may be necessary, that African slavery may succeed; but such a course must not be expected to produce peace and satisfaction in our country, so long as the people retain any proper sentiment of justice, liberty, and law.

J. COLLAMER.



2

304 200

LHC

6607-4

93





























LIBRARY OF CONGRESS



0 016 094 479 1

